

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-2380

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

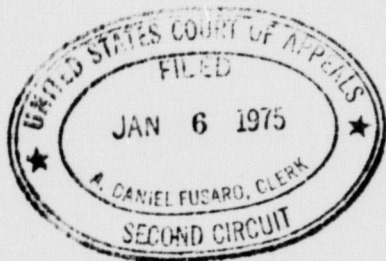
- against -

ELDON TURCOTTE and FORREST GERRY, JR.,

Defendants-Appellants.

*On Appeal from the United States District Court for the Eastern
District of New York.*

**APPENDIX FOR DEFENDANT-APPELLANT,
FORREST GERRY, JR.**



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For U. S.: Meyerson

U.S.

DOCKET
ENTRIES

ELDEN TURCOTTE

FORREST GERRY JR.

For Defendant:

NICHOLAS CASTELLANO

150 East Old Country Rd.

Lincoln, N.Y. 11501

516-117-8372

d unlawfully influence a witness before the Grand Jury

ABSTRACT OF COSTS		AMOUNT		CASH RECEIVED AND DISBURSED					
				DATE	NAME	RECEIVED		DISBURSED	
ne,	<i>Rory Jr.</i>	<i>1901</i>	<i>7</i>	<i>10-18-74</i>	<i>Notice of Appearance</i>	<i>Furcutte</i>	<i>5</i>	<i>—</i>	
rk,				<i>10-21-74</i>	<i>Paid to Treas.</i>			<i>5</i>	<i>—</i>
arshal,				<i>10-31-74</i>	<i>Notice of Appeal</i>	<i>Gentry</i>	<i>5</i>	<i>—</i>	
orney,				<i>10-31-74</i>	<i>Paid to Treas.</i>			<i>5</i>	<i>—</i>
mmissioner's Court,									
itnesses,									

DATE	PROCEEDINGS
-74	Before JUDD, J. - Indictment filed
1-74	Before JUDD, J. - Case called - Deft and counsel present - Defts arraigned and enter pleas of not guilty - Bail contd as to both depts - Case adjd to 2-21-74 for trial
-6-74	Notice of Motion filed for Discovery, Bill of Particulars, dismissal of the Indictment, Inspection of Grand Jury Minutes, etc. (ret. 2/5/74)
-74	Before JUDD, J. - Case called - Deft and counsel not present - A.U.S.A. present - Marked submitted - XXXXXXXXXXXXXXXXXXXXXXXXXXXX
-74	By JUDD, J. - Order filed that motion to adjourn trial denied - Motion for discovery granted as to Items 1, 2, 3, 4, 5, 12, 13, 15 and 16 - Motion for Brady material granted as to the extent of requiring disclosure of material favorable to Deft on the day of trial - Motion for particulars

DATE	PROCEEDINGS
	granted as to items 1, 2,3,4,5, 12, 13,15 and 16 to be supplied by 2-14-74- Motion to suppress deferred to the day of trial and motion to inspect Grand Jury minutes denied (see order attached to motion papers)
2-15-74	Govt's Discovery and Inspection and Bill of Particulars filed
2-21-74	Before JUDD, J.- Case called- Adjd to 2-25-74 for trial
2-27-74	Govts Notice of Readiness for Trial filed
3-6-74	By JUDD, J.- Order filed that the bail limitations imposed upon the depts travel are extended to include Louisiana and Texas (GERRY)
3-11-74	Before JUDD, J - case called - depts & counsels present - Trial ordered and BEGUN - Jurors selected and sworn - Depts motion for mistrial is denied - Trial contd to March 12, 1974.
3-12-74	Before JUDD, J.- Case called- Depts and counsel present- Trial resumed Depts' motion to suppress-motion denied- Trial contd to 3-13-74
3-13-74	Before JUDD, J - case called - depts & counsels present - Trial resumed - depts motion for mistrial - motion denied - Trial continued to March 14, 1974.
3-14-74	Before JUDD, J.-Case called- Depts and counsel present-Trial resumed Govt rests-Deft Turcotte's motion to dismiss argued and denied-Deft Gerry's motion to dismiss argued and denied-Deft Turcotte rests- Deft Gerry rests Both depts renew motions to dismiss-motion denied-Trial contd on 3-15-74 at 12:00 P.M.
3-15-74	Before JUDD, J - case called - depts & counsels present - Trial resumed -Judge charges Jury - Marshals sworn - Order of Sustenance signed - Jury retires to deliberate at 3:40 PM - Jury returns at 5:20 PM to hear section of charge read back - Jury resumed deliberations at 5:30 PM - jury deliberations contd to Mar. 18, 1974.
3-15-74	By JUDD, J - Order of Sustenance filed.
3-18-74	Requests To Charge filed by Nicholas Castellano, Esq. (TURCOTTE)
3-18-74	Before JUDD, J- case called - depts & counsels present - Juror #12 reported sick - depts motion for mistrial - Motion granted - mistrial declared - Jury discharged.
3-18-74	4 Volumes of stenographers transcripts filed (pgs 1 to 709)
3-18-74	Stenographers transcript filed dated Mar. 15, 1974.
3-19-74	Two stenographers transcript filed (pgs 940 to 1109) (2)
6-11-74	Notice of readiness for trial filed
6/28/74	Before PLATT I - Case called- Depts and counsel present- Set for trial for 7/9/74

7-11-74	Notice of Motion filed, for dismissal of counts 2 and 3; granting deft TURCOTTE a separate trial, etc. (forwarded to Chambers to set ret. date)
7-12-74	Govts Memorandum filed in opposition to defts motion to dismiss and for separate trial, etc. (Turcotte)
7-15-74	Before PLATT, J - case called - adjd to July 16, 1974 at 9:45 am for trial.
7-16-74	Before JUDD, J. - Case adjd to 7-23-74 at 10:00 A.M. for trial
7-22-74	Govt's trial brief filed
7-23-74	Before PLATT, J. - Case called- Defts and counsel present- Trial ordered and begun-Deft Turcotte's motion to sever denied- Jurors selected and sworn- Trial contd to 7-24-74
7-24-74	Before PLATT, J - case called - defts & counsels present - trial resumed - Trial contd to 7-25-74.
7-25-74	Before PLATT, J - case called - trial resumed - trial contd to July 29, 1974.
7-29-74	Before PLATT, J. - Case called- Defts and counsel present- Trial resumed- Trial contd to 7-30-74
7-30-74	Before PLATT, J - case called - trial resumed - deft Turcotte moves to dismiss counts 1, 2-3 - motion denied as to each count - deft Gerry motion to dismiss counts 2 & 3 - motion denied as to each count - Trial resumed on July 31, 1974
7-31-74	Before Platt, J - case called - trial resumed - Deft Turcotte motion to dismiss counts 1, 2, 3 - motion denied - Deft Gerry motion for Acquittal - motion denied - deft Turcotte motion for a mistrial -motion denied - trial contd to 8-1-74.
8-1-74	Before PLATT, J. - Case called- Defts and counsels present- Trial resumed Court charges jury- Order of sustenance signed- Trial contd to 8-2-74 at 9:30 A.M.
8-1-74	By PLATT, J. - Order of sustenance filed
8-2-74	Before PLATT, J. - Case called- Defts and counsel present- Trial resumed Jury returns with a verdict of guilty on counts 1,2,3 as to deft TURCOTTE and a verdict of guilty on counts 2 and 3 as to deft GERRY- Jury polled Jury discharged- Trial concluded
8-2-74	By PLATT, J. - Order of sustenance filed
8-2-74	Stenographers Transcripts dated 7-23-74, 7-24-74, 7-25-74 and 7-29-74 filed (pages 1-729(a))

2-74 Stenographers transcript filed dated 8-2-74.
-74 Stenographers transcript filed dated 8-1-74.
0-74 Affidavit of Elden Turcotte filed
11-74 Before PLATT, J - Case called - deft GERRY & counsel Ed Bobick present. Deft is sentenced on count 2 for imprisonment for 4 years to run concurrently with the sentence imposed in 73 CR 1068 and that the deft be fined the sum of \$5,000 and deft is sentence on count 3 to imprisonment for 4 years, said sentence on count 3 to run concurrently with sentence on count 2 and concurrently with sentence imposed in 73 CR - 1068 and the deft is fined the sum of \$5,000.00
11-74 Judgment & Commitment filed - certified copies to Marshal (GERRY)
18-74 Before PLATT, J - case called - deft Turcotte & counsel N. Castellano present - deft sentenced on count 1 to imprisonment for a term of 1 yr and 1 day; on count 2 for a term of 1 year and 1 day, said sentence on ct. 2 to run concurrently with the sentence on count 1; and on count 3 the deft is sentenced to imprisonment for one year and 1 day, said sentence on count 3 to run concurrently with the sentence on count 1 and count 2. The court recommends the institution at Danbury, Conn. Bail contd pending appeal.
18-74 Judgment & Commitment filed - certified copies to Marshal (TURCOTTE)
18-74 Notice of Appeal filed (TURCOTTE)
18-74 Docket entries and duplicate of Notice mailed to the Court of Appeals (TURCOTTE)
21-74 Notice of Appeal filed (GERRY JR)
1-74 Docket entries and duplicate of Notice of Appeal together with Form A mailed to the Court of Appeals (GERRY JR)

INDICTMENT

UNITED STATES OF AMERICA

-v-

ELDON TURCOTTE
FORREST GERRY, JR.

Defendants

INDICTMENT

13 U.S.C. §1623
19 U.S.C. §1503
18 U.S.C. §371
18 U.S.C. §2

74CR 64

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 14th day of September 1973, in the Eastern District of New York, a competent tribunal, that is, a Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Eastern District of New York, was conducting an inquiry to determine among other things, whether, in connection with the case of United States v. John Doe, Criminal Case No. 731,774, there had been committed in the Eastern District of New York violations of 18 U.S.C. §224 (Sports Bribery) and other Federal criminal statutes, said inquiry being a case in which a law of the United States authorized an oath to be administered.

It was material to this Grand Jury inquiry to ascertain, among other things:

- a. Whether or not there was any business relationship between the defendant Eldon Turcotte and the defendant Forrest Gerry, Jr.
- b. Whether or not Forrest Gerry, Jr. was the real and actual owner or part owner of horses listed in other persons names.
- c. Whether or not Eldon Turcotte was the real and actual owner or part owner of horses listed in other persons names.

On or about the 14th day of September 1973, the defendant Eldon Turcotte, having duly taken an oath before the said Grand Jury that, as a witness before said Grand Jury, he would testify truly, did then and there, wilfully and contrary to such oath, state material matter which he did not believe to be true and knew to be false to wit:

A. Let me ask you this: With particular horses, how would you be involved with them as an owner, as a trainer, as a driver? Is there anything else that I'm leaving out because I'm not familiar with racing myself.

A. No.

Q. Let me ask you with all three, as an owner, as a trainer, as a driver, for any horses that you were an owner of, that you drove or that you are a trainer of, is Forrest Gerry the real owner of those horses?

A. No.

Q. Do you know anything about Forrest's hidden ownership of horses, the fact that he owns horses that are listed in other people's names?

A. No.

.....

Q. Mr. Turcotte, have you driven any horses within the last nine months that you know have belonged to Forrest Gerry?

A. That I knew belonged to Forrest Gerry?

Q. Yes.

A. No. I raced horses for a Mr. Kraft Hill Farms that I was under the impression and believe they belong to Kraft Hill Farms. From my understanding just rumors going around, I don't know if there's any truth to it that Forrest Gerry was the agent on these horses that they were bought by him for Kraft Hill Farms. The horses were sent to me registered for Kraft Hill Farms. The money that these horses earned was sent to Kraft Hill Farms. The claim check, when it was claimed, went to Kraft Hill Farms and Kraft Hill Farms as far as I'm concerned, still owes me the money. Now, as far as Forrest Gerry owning the horses, not to my knowledge.

Q. Kraft Hill Farms who would be the owner there?

A. I think it's two boys. Their sons or Dave Kraft.

(Title 18, United States Code, Section 1623)

COUNT TWO

From on or about the 21st day of May, 1973 to on or about the 30th day of August, 1973 both dates being approximate and inclusive, within the District of New Jersey, the defendant Forrest Gerry, Jr. and the defendant Eldon Turcotte, did corruptly endeavor to influence, obstruct and impede the due administration of justice in the United States District Court for the Eastern District of New York by endeavoring to influence David Kraft, a witness before a Grand Jury of the Eastern District of New York investigating possible violations of the sports bribery law, Title 18, United States Code, Section 224, to give false testimony before the said grand jury in relation to the aforesaid violation.

(Title 18, United States Code, Section 1593, Title 18 United States Code, Section 2.)

COUNT THREE

From on or about the 21st day of May, 1973 to on or about the 14th day of September, 1973 both dates being approximate and inclusive, within the Eastern District of New York and the District of New Jersey, the defendant Forrest Gerry, Jr. and the defendant Eldon Turcotte wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit the following offenses against the United States:

1. to wilfully and knowingly endeavor to influence, obstruct and impede the due administration of justice in the United States District Court for the Eastern District of New York by endeavoring to influence David Kraft, a witness, before a Grand Jury of the Eastern District of New York investigating possible violations of the sports bribery law, Title 18, United States Code, Section 224, to give false testimony before said Grand Jury in relation to the aforesaid violation, in violation of Title 18, United States Code, Section 1503 and 2.

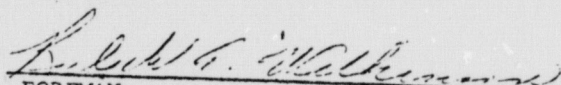
2. to procure Eldon Turcotte to commit perjury, an offense against the United States in violation of Title 18, United States Code, Section 1622.

In furtherance of the conspiracy and to effect the objects thereof, the defendants performed the following:

OVERT ACTS

1. On or about August 4, 1973 Forrest Gerry, Jr. met with David Kraft at Kraft Hill Farms, Farmingdale, New Jersey.
2. On or about August 19, 1973 Forrest Gerry Jr. and Eldon Turcotte met with David Kraft at Kraft Hill Farms, Farmingdale, New Jersey.
3. On or about August 30, 1973 Forrest Gerry met with David Kraft Hill Farms, Farmingdale, New Jersey.
4. On or about September 14, 1973 Eldon Turcotte testified as a witness before the Special May 1972 Grand Jury in the Eastern District of New York.
(Title 18, United States Code, Section 371).

A TRUE BILL


FOREMAN

United States District Court
FOR THE
EASTERN DISTRICT OF NEW YORK

United States of America

v.

FORREST GERRY, JR.

No. 74 CR 64

DEC 1974

On this **11th** day of **October**, 19 **74** came the attorney for the government and the defendant appeared in person and with counsel

It IS ADJUDGED that the defendant upon his ~~plea~~ a verdict of guilty

has been convicted of the offense of violating T-18, U.S.C.Secs. 1503, 2 & 371 in that the defendant, with another, did corruptly endeavor to influence, obstruct and impede the due administration of justice in the U.S. District Court for the Eastern District of N.Y., by endeavoring to influence a witness before a Grand Jury of the Eastern District of N.Y. investigating possible violations of the sports bribery law, T-18, U.S.Code, Sec. 224, to give false testimony before the said Grand Jury in relation to the aforesaid violation

as charged³ in counts 2 & 3

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It IS ADJUDGED that the defendant is guilty as charged and convicted.

It IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **4 years to run concurrently with the sentence imposed under 73 CR 1068** and that the defendant be fined the sum of \$5,000 and debt is sentenced on count 3 for a term of imprisonment of 4 years, said sentence to run concurrently with sentence on count 2 and concurrently with sentence imposed under indictment 73 CR 1068, and the defendant is fined the sum of \$5,000.00.

~~It IS ADJUDGED that~~

It IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to⁶

A8

Thomas C. Lott
United States District Judge.

TRANSCRIPT OF PORTIONS OF KRAFT'S CROSS EXAMINATION²³⁶
(POINT II)

6

1

Kraft-cross

2

3

4

Q And that is under the indictment that was
tried here for 12 weeks, where there were 22 defendants,
is that right?

5

A That is right, sir.

6

7

Q And have you been sentenced on that charge,
yet?

8

A No, sir.

9

10

Q Prior to that time, you were convicted of
receiving stolen property, were you not?

11

A That is right.

12

13

Q And that is when you told us about when you
were given probation and a 1600 dollar fine?

14

A That is right, sir.

15

16

Q Prior to that, Mr. Kraft, you were convicted--
MR. SHANLEY: Objection, your Honor.

17

18

Q Convicted in New Jersey of atrocious assault
and battery, were you not?

19

MR. SHANLEY: Objection.

20

A No, sir.

21

22

Q Mr. Kraft, would you look at this and tell
me what it is?

23

MR. SHANLEY: Objection, your Honor.

24

25

THE COURT: Let me take a look at it. I
want to see what you have.

1 Kraft-cross

2 You have an objection.

3 MR. SHANLEY: I do, your Honor.

4 THE COURT: Come up to side bar.

5 (A side bar was held without the hearing of
6 the jury:)

7 THE COURT: What is the objection?

8 MR. DEL GROSSO: There is no conviction.

9 MR. SHANLEY: It is remote in time.

10 THE COURT: How long is it?

11 MR. DEL GROSSO: Beyond 10 years.

12 THE COURT: It is beyond 10 years?

13 MR. DEL GROSSO: Yes, and under U.S. versus
14 Locke, you cannot go anything beyond 10 years.

15 THE COURT: I think he is right, Mr. Castellano.

16 MR. CASTELLANO: What do you want to tell the
17 jury?

18 THE COURT: I will tell them to disregard the
19 question.

20 MR. CASTELLANO: Because it was beyond the
21 time?

22 THE COURT: No, I am not going to tell them
23 about the fact it is beyond the 10 years. I will
24 tell them to disregard the question. I have
25 sustained the objection.

Kraft-cross

MR. CASTELLANO: I respectfully except.

(The side bar was concluded.)

THE COURT: Ladies and gentlemen of the jury, you are to disregard the question asked by Mr. Castellano. The objection is sustained.

MR. CASTELLANO: You sustained the objection with regard to atrocious assault and battery, did you not?

THE COURT: Mr. Castellano, I did not --

MR. CASTELLANO: I am not going to do it again. I think I understand. I am not going to ask another question about atrocious assault or battery.

THE COURT: Come up, please.

(Side bar was held, without the hearing of the jury as follows:)

THE COURT: I am going to warn you just one more time, and I am going to start counting them against you.

MR. CASTELLANO: Fine.

THE COURT: When something has been ruled on as being over 10 years and inadmissible, you are not to ask any further questions with respect to that which is over 10 years.

1 Kraft-cross

2 witness about it.

3 MR. CASTELLANO: Do not persist in telling
4 me what I cannot do. I know I cannot do what you
5 tell me not to, but I want the record to show what
6 I intend to do and that you are stopping me from.
7 That is all. I intend to ask this man --

8 THE COURT: Quieter, please.

9 MR. CASTELLANO: -- to look at this and tell
10 me whether or not this is the print record and then
11 I intend to ask him about anything beyond whatever
12 the date is here, 10 years ago from this date.

13 THE COURT: You have already asked him about
14 that.

15 MR. CASTELLANO: There are things which I
16 am entitled to ask him about. He said he was
17 charged with receiving stolen goods. There are
18 two cases, and I want to ask him about it.

19 MR. SHANLEY: That is not a conviction.

20 THE COURT: There is no conviction, you cannot
21 ask him.

22 MR. BOBICK: Can't we ask him about any
23 moral acts, ask him whether he did it?

24 THE COURT: No.

25 MR. BOBICK: Your Honor, we are trying to

11

Kraft-cross

show motive for lying. There is a case that has not yet been tried. Now whether he receives consideration under this testimony -- I am talking about receiving stolen goods.

MR. CASTELLANO: There are no dispositions listed here. The Government hands you this without any dispositions. I warrant you, in the first trial and in the second trial, and in this trial, I will ask him for dispositions, and I never get it.

THE COURT: You are entitled to go up and look for a certificate of conviction yourself.

MR. BOBICK: Are we not entitled to ask him whether or not there is still a case open against him?

(continued next page.)

K:pc
1/3pm

1 Kraft-cross

2 THE COURT: In this court?

3 MR. BOBICK: In this court.

4 THE COURT: In this court only.

5 MR. BOBICK: Your Honor, this case is open and
6 part of the consideration was that he would not be --

7 THE COURT: This is the New Jersey court as
8 I understood it.

9 MR. BOBICK: Part of the consideration for
10 the testimony was 1, that they would not take away
11 his license, that they would help him in the New
12 Jersey harness racing and 2, they would not violate
13 the probation.

14 THE COURT: Be quiet for a moment. There is
15 nothing that the Court can do to effect the outcome
16 of the State proceeding any more than they can to
17 effect the Government outcome.

18 MR. CASTELLANO: I hope your Honor is not
19 serious about that.

20 THE COURT: I finished denying a motion on that
21 very question.

22 The objection is overruled.

23 MR. BOBICK: He admitted at a former trial,
24 this was the consideration he got.

25 THE COURT: Show me in the record.

A14

1 Kraft-corss

2 MR. BOBICK: This deals with this question
3 in this part of the record. This is as to the
4 State Racing Commission, where they are trying to
5 save his license, and if you look back a couple of
6 pages, I think I can find the other part concerning
7 the other crimes.

8 THE COURT: If you ask him whether any promises
9 had been made to him in connection with his testimony,
10 I have no objection to that. But not the route you
11 are going. You can ask him whether any promises have
12 been made to him by any State or federal officials
13 in return for his testimony. You may be bound by
14 his answers.

15 MR. CASTELLANO: I do not have to take
16 exceptions.

17 MR. SHANLEY: I would ask that the Court direct
18 Mr. Castellano not to wave that around.

19 MR. CASTELLANO: I will ask to have it marked
20 for identification.

21 THE COURT: He is entitled to have it marked
22 for identification.

23 MR. CASTELLANO: And announce what it is.

24 THE COURT: No, you may not.

25 (The side bar was concluded.)

Kraft-cross

to the over \$300,000. It was explored yesterday and further questioning on this is repetitious.

THE COURT: I think it is repetitive.

Q Mr. Kraft, were you sentenced on your plea to the conspiracy to bribe and bribery case, yet?

A No, sir, I've not been.

Q Have you asked to be sentenced on that plea?

A HAVE I asked?

Q Yes, have you asked them to sentence you prior to this trial?

A I do not know how to answer that, sir.

Q You took the plea back in March 11 or 12 of 1974, right, before Judge Judd?

A I do not know the dates, sir, but if that is the date, I will say yes.

THE COURT: Mr. Castellano, a defendant normally does not ask to be sentenced.

MR. CASTELLANO: I appreciate that, Judge. I said sometimes it is a situation where a defendant does ask to be sentenced.

THE COURT: It is a rare situation.

MR. CASTELLANO: It is a rare occasion.

Q In any case, was this a rare occasion where you did ask to be sentenced?

Kraft-cross

THE COURT: Come, Mr. Castellano.

MR. DEL ROSSO: May we approach the side
bar?

THE COURT: No.

MR. CASTELLANO: I have to take exception.

THE COURT: You may take an exception.

(continued next page.)

Kraft-cross

was the two horses in the other names and the third reason I wanted the side bar --

THE COURT: You can read him the testimony.

MR. BOBICK: First thing - -

THE COURT: In fact, you read part of it.

MR. BOBICK: And Mr. Castellano asked him,

"Did you asked to be sentenced before this case, this trial," and your Honor made a comment that it is not unusual, not rare, and the witness said, "I don't know how to answer the question," but the fact is he did make the request.

MR. CASTELLANO: I took the exception because you wouldn't let me ask.

THE COURT: Did he ask?

MR. DEL GROSSO: I have no knowledge.

MR. CASTELLANO: The witness would have the knowledge .

THE COURT: Did he so testify to that?

MR. DEL GROSSO: Your Honor, it's irrelevant.

THE COURT: Yes, it is irrelevant.

MR. CASTELLANO: See if you think this is relevant: If a man sought to get sentenced, and got a suspended sentence, then there would be no pressure and he wanted that situation to prevail so there

A18

Kraft-cross

would be no pressure, and he might well have said, "I don't want to testify," but because he wasn't sentenced, he might be compelled --

MR. BOBICK: Or he might think he is compelled--

MR. DEL GROSSO: As to sentencing, that is up to Judge Judd.

THE COURT: Oh, yes. No question about that.

This is completely irrelevant. I won't allow a question like that to be asked.

If you can produce a record in this court showing he requested before the Court Stenographer, an early sentence, three or four weeks ago, that is one thing, but otherwise, I won't let you question him on that.

MR. BOBICK: One simple question:

"Did you make a request" --

THE COURT: He said, "I don't know how to answer that question."

That's the answer and you are bound by the answer and cannot pursue it.

Let's get on with it.

MR. SHANLEY: For the record, Mr. Meyerson was sitting in here before, and the Government does not intend to call Mr. Meyerson --

3 1 Kraft-cross/Bohick

2 the money?

3 "Answer: Nobody."

4 Sir, do you remember being asked that question
5 and giving that answer?

6 A If that is what it says, that is what I said,
7 but I was told not to give it back.

8 Q "Question: Who in your --- Well, who in Mr.
9 Pollack's office in the United States Attorney's
10 office told you not to give him back the money?

11 "Answer: Nobody."

12 Do you remember being asked that question
13 and giving that answer?

14 A No, sir. If that is how I answered it, that
15 is what I said.

16 Q "Question: Did anybody tell you not to give
17 him back the money?

18 "Answer: Nobody never did."

19 Do you remember being asked that question
20 and giving that answer?

21 A If I gave that answer, that is what I said.

22 Q I see.

23 Mr. Kraft, do you know of your own knowledge
24 that once a person is arrested and charged with a crime, he
25 cannot be forced to testify before the Grand Jury against

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his will?

MR. SHANLEY: I object to the form of the question.

THE COURT: Objection sustained.

MR. BOBICK: May we have a side bar conference?

THE COURT: I see no necessity. Your question was bad in form. It is a legal question, furthermore Mr. Bobick.

MR. BOBICK: Well, your Honor, I'm asking of his own person knowledge.

THE COURT: I understand you used the word "can" to begin with.

MR. BOBICK: I really do not understand.

THE COURT: You used the word "can."

MR. BOBICK: May I have the question read back?
(Question read.)

Mr. Kraft, do you know of your own knowledge, once a person is arrested and charged with a crime, he will not be forced to testify before the Grand Jury against his will?

MR. SHANLEY: Objection, your Honor.

THE COURT: Objection is sustained.

MR. BOBICK: Also as to form?

THE COURT: Yes.

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Q Mr. Kraft, do you know of your own knowledge that once a person is arrested, and charged with a crime, the Fifth Amendment of the Constitution prevents him from being forced to testify before a Grand Jury against his will?

MR. DEL GROSSO: Objection to this, your Honor.

THE COURT: Well again, the form is bad, but I will allow it.

Do you know the Fifth Amendment, what protection the Fifth Amendment provides a person? Do you know that?

THE WITNESS: No, I do not.

Q Well, Mr. Kraft, do you know that a person cannot be forced to testify against his will unless immunity is given to him?

MR. DEL GROSSO: Objection.

THE COURT: Sustained.

Q Mr. Kraft, did you ever ask the United States Government for immunity?

A Yes, I did.

Q And did you understand what you were doing?

A Yes, sir.

Q Then did you know what immunity was?

6

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Kraft-cross/Bobick

2

A Yes, sir.

3

4

Q And did you ask the United States to give you immunity?

5

A Yes, sir.

6

7

Q And did they refuse to give you immunity?

8

A That is right, sir.

9

Q Subsequent to that time, by the way, was that time May 21, 1973?

10

A I do not recall the time, sir.

11

Q Was it before you went to the Grand Jury?

12

13

A I had an attorney that was asking these questions at that time, sir and that is who was handling it at that time.

14

15

Q Therefore, your attorney asked for your immunity?

16

17

A That is what he was supposed to be -- be doing.

18

19

MR. DEL GROSSO: Objection to this, your Honor.

20

21

THE COURT: Do you know, were you present when he requested immunity?

22

23

THE WITNESS: My attorney knows.

24

THE COURT: Then you do not know?

25

THE WITNESS: No, sir.

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Q Did you ever ask for immunity?

A Yes, sir.

Q Personally?

A Yes, sir.

Q Was your attorney present at that time?

A No, sir.

Q So therefore we are talking about your request for immunity?

MR. DEL GROSSO: Objection, Mr. Bobick has no standing to serve himself in the witness' position as to whether or not the witness' statements are allowed or disallowed.

THE COURT: I will allow it. I do not know where it is going, but I will allow it.

Q Mr. Kraft, did you personally ask the United States Attorney for an immunity?

THE COURT: He has already answered yes.

Q When did you ask them for immunity?

MR. SHANLEY: He has answered that question too. He said he did not recall.

THE COURT: Do you recall when you asked for immunity?

THE WITNESS: No, sir.

THE COURT: Do you know of whom you asked?

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A Mr. Hal Meyerson.

Q Do you remember where you asked?

A The only place I would --

THE COURT: In his office?

THE WITNESS: Would be in his office, that is the only place I ever saw him.

Q Is that to the best of your recollection?

A To the best of my recollection.

Q Didn't you see Mr. Meyerson in the Grand Jury room?

A I had seen him in the Grand Jury room, yes.

Q Did you ask him for immunity in the Grand Jury room?

MR. SHANLEY: Your Honor, I would object to any further questions. He testified that he did ask, but he does not recall where.

THE COURT: I think it is perfectly proper. Is this something in the Grand Jury transcript?

MR. BOBICK: Yes, your Honor.

MR. DEL GROSSO: Could we have a side bar? And state the Government's objection?

MR. BOBICK: Well, your Honor, I would like to continue.

THE COURT: They may have a side bar, Mr. Bobick.

9 1 Kraft-cross/Bobick

2
3 (A side bar was held without the hearing of
4 the jury as follows:)

5 THE COURT: I do not see the point of the
6 question. He asked for immunity and he was denied.

7 MR. BOBICK: This is his Grand Jury testimony.
8 Now taking it a step further, your Honor --

9 THE COURT: Let the Government present it's
10 objection.

11 MR. DEL GROSSO: Your Honor, the objection here
12 is that if there were any statements as the defense
13 asking that everything, all the information that
14 this witness has given be excluded because he was
15 not afforded Miranda warnings, or he was not
16 afforded proper legal counsel, I do not know that
17 that that is a matter Mr. Bobick or any defendant
18 are in a position to question about. They do not
19 have the standing as to whether or not he has any
20 legal right and whether --

21 MR. BOBICK: At this point I am going to ask
22 for a ruling from the Court to the jury that an
23 individual cannot be forced to go before a Grand
24 Jury unless he is granted immunity unless he requests
25 the same once he has been arrested and charged with
a crime.

1 Kraft-cross/Bobick

2 THE COURT: Mr. Bobick, the books are full of
3 reasons why and insofar as being forced to go before
4 a Grand Jury, this happens all the time.

5 In May he had not been arrested.

6 MR. BOETICK: That is right.

7 THE COURT: He was not arrested until July.

8 MR. BOBICK: The conversation in which Gerry
9 allegedly, according to the Government case, allegedly
10 attempted to obstruct his testimony before the
11 Grand Jury, occurred in August, after he was
12 arrested and where he could not have gone before the
13 Grand Jury or be forced to go before the Grand Jury
14 without getting immunity.

15 THE COURT: Oh, no, that will not be brought
16 before this jury. I will hear it outside the jury,
17 but not before the jury.

18 MR. BOETICK: Let us have a recess and work
19 on it now.

20 THE COURT: We will work at it at some recess
21 point. I will not interrupt the trial.

22 MR. CASTELLANO: It is very elementary,
23 because if he knows and Gerry knows that he has
24 been arrested at the time of the conversation, then
25 it is very material.

11 1 Kraft-cross/Bobick

2 THE COURT: He said he did not know.

3 MR. CASTELLANO: He has been arrested and
4 he is awaiting indictment and he asked for immunity
5 and he has not gotten it and then there is no
6 reason for Gerry to believe he is going back to a
7 Grand Jury.

8 THE COURT: You are jumping several steps. You
9 have not a time sequence established as to when he
10 asked for immunity and when he was denied immunity.

11 Secondly, you have not got anything established
12 about Gerry's knowledge in the subject at all.

13 I do not think it is relevant.

14 (continued next page.)
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fk/pc
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Kraft-cross/Bohick

MR. CASTELLANO: Then you have of necessity to permit him to question him:

"Was it on the 21st you asked for immunity?

"Yes, and I was refused.

"Then were you later arrested on July 25?

"Yes, I was charged with perjury.

"Did Gerry know you were arrested and charged with perjury?"

MR. SHANLEY: May I be heard?

Our brief outlines the necessary elements for the establishment of a person being a witness before a Grand Jury and the case was quite clear that a witness can be considered a witness without having formally been told and in this situation, Mr. Gerry full well knew this man had been arrested and was certainly very liable to testify again in the future before the Grand Jury.

MR. CASTELLANO: That is exactly the point.

MR. BOBICK: Exactly the point.

(The side bar was concluded.)

THE COURT: Ladies and gentlemen, I will have to ask you to retire.

(The jury left the courtroom.)

THE COURT: Put your question in the absence

Kraft-cross/Bobick

of the jury.

BY MR. BOBICK:

Q Mr. Kraft, when was the first time --

THE COURT: You do not have to scream, there is no jury, and it does not make an impression.

Ask your question in a normal tone.

Q When was the time you asked for immunity?

A I do not recall.

Q Did you ask for immunity on May 21, 1973 in the Grand Jury? See if that refreshes your recollection?

MR. BOBICK: I am showing him a copy of the May 21, 1973 Grand Jury.

MR. SHANLEY: I would like to make a comment.

MR. DEL GROSSO: It might be easier to settle this if this man had immunity he could still lie, he could still --

THE COURT: Let him put his offer of proof on the record.

A I requested immunity on the advice of counsel just before I entered the Grand Jury on that date.

Q Well, sir, did you not testify or did you not state on the transcript, that you never had a chance to talk to your counsel but that you hired him 10 minutes before you walked into the courtroom, into the Grand Jury room?

1
2 THE COURT: What has that to do with this
3 question.

4 A It only took two minutes to tell me that,
5 sir.

6 THE COURT: Mr. Bobick, what has that to do
7 with the question?

8 MR. BOBICK: I would like to question this
9 man as to what he testified before, that he had an
10 attorney that was making --

11 THE COURT: You are not impeaching him before
12 me. Get to the point.

13 Q Did your attorney continue to ask for immunity
14 for you?

15 A Up until I was arrested and decided to talk
16 to the people, the FBI and the necessary people myself. I
17 guess that is what he was doing.

18 Q Is that what you instructed him to do, to try
19 to get you out of it --

20 MR. SHANLEY: I will object to any conversations
21 between attorney and client.

22 THE COURT: You are not in a position to raise
23 that objection. Go ahead.

24 A I cannot instruct him what to do, sir.

25 THE COURT: All right.

1
2 Q Did you tell Mr. Gerry that you were under
3 arrest, that you were arrested?

4 A That is correct.

5 Q Did you tell Mr. Gerry what you were arrested
6 for?

7 A That is right.

8 Q Did you talk to Mr. Gerry about your trying
9 to get immunity?

10 A That is right.

11 Q And did you tell Mr. Gerry that you wanted
12 immunity?

13 A Correct.

14 Q And did you tell Mr. Gerry that you did not
15 get immunity?

16 A That is correct.

17 Q And did you tell him that on August 4, 1973
18 at your conversation which is recorded?

19 A That I did not get immunity? What are you
20 referring back to, sir?

21 Q Would you read the question?

22 (Question read.)

23 A I do not recall whether I told him whether
24 I got immunity or whether that was part of the conversation.
25 I do not know if that is part of it or not.

16

1 Kraft-cross/Bobick

2 Q Had you had immunity on August 4 ?

3 MR. SHANLEY: Your Honor, the witness
4 testified.

5 THE COURT : That he said he did not have
6 immunity.

7 THE WITNESS: I had no immunity.

8 THE COURT: He had pled guilty as I understand.

9 MR. BOBICK: Not on August 4.

10 THE COURT: At a later stage. How can you
11 say he got immunity when he did not get immunity?

12 MR. BOBICK: He could have told Mr. Gerry
13 he had immunity or discussed immunity.

14 THE COURT: He already said he discussed it
15 with Mr. Gerry.

16 On August 4, did you discuss it in an interview
17 with Mr. Gerry?

18 THE WITNESS: I do not know whether I discussed
19 immunity. I told him I was seeking immunity in one
20 sentence, somewhere I recall something like this.

21 Whether it was August 4 or some previous date,
22 I am not sure, but I am sure I did say that one time.

23 Q Did you tell Mr. Gerry that you were going
24 back before the Grand Jury?

25 A I am sure I told him I have to go back again.

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Kraft-cross/Bobick

Q Where did you tell him that or when did you tell him that?

A I do not recall, sir. I know I told him I would have to go back.

MR. SHANLEY: Your Honor, I do not know whether you heard that remark by Mr. Castellano.

THE COURT :There is no jury here. It does not make any difference what Mr. Castellano says to Mr. Bobick. If he said it in front of the jury he would have some accounting to do.

(continued next page.)

1 Kraft-cross/Bobick

2 MR. CASTELLANO: Judge, you do say, though,
3 I didn't say it before the jury?

4 THE COURT: That's right.

5 MR. CASTELLANO: And I said it to Mr. Bobick
6 because we are all lawyers here.

7 THE COURT: All right. Sit down. Sit down.

8 THE WITNESS: Somewheres, your Honor, I said
9 I have to go back.

10 THE COURT: All right. I understand that.

11 What is your point, Mr. Bobick? I've heard
12 this testimony. I still do not see the relevancy.

13 MR. BOBICK: The point is as follows, your
14 Honor:

15 That if this defendant was arrested, and I
16 would like to bring that out, I haven't finished it
17 yet, but I'll bring it out. If this defendant was
18 arrested as a result of his Grand Jury appearance,
19 and he was arrested on the perjury count, and if he
20 requested immunity on that occasion and subsequently
21 thereto, and if he told Forrest that he couldn't get
22 immunity, there would be -- I ask this man with his
23 previous criminal experience, whether he would know
24 that he -- would he know that he couldn't be forced
25 to go before the Grand Jury to testify against his

1 Kraft-cross/Pobick

2 will?

3 THE COURT: Ask him that question.

4 BY MR. LOBICK:

5 Q Well, I ask you, because of your previous --

6 THE COURT: Go ahead.

7 Q -- previous experience with the law and your
8 previous conflicts with the law, do you know of your own
9 knowledge that once you are arrested for a crime, awaiting
10 indictment, you do not have to appear before the Grand
11 Jury?

12 MR. SHANLEY: Your Honor, that's a mis-
13 statement of the law.

14 THE COURT: Wait a minute. I understand it
15 is a misstatement. He is asking him a question,
16 whether he knows something of his own knowledge.

17 Go ahead. Finish.

18 A (continuing) I -- Is that the question, I
19 wouldn't -- would naturally not know. I have no knowledge
20 of that, and I don't -- I didn't know what you mean by
21 my criminal background.

22 THE COURT: All right, Mr. Bobick. I think
23 that I am going to sustain the objection to this
24 line of questioning.

25 MR. BOBICK: You are going to sustain

3 1 Kraft-cross/Bobick

2 the objection?

3 THE COURT: I do not see that this is
4 proper material to put in front of the jury.

5 MR. BOBICK: Your Honor, may I ask the Court
6 this question? The question that arises on this case
7 is whether or not Mr. Gerry, with or without Mr.
8 Turcotte, no matter how you want to handle it, whether
9 Mr. Gerry, and that's who I am interested in, had
10 attempted to get this witness to testify falsely
11 before the Grand Jury.

12 That's what the charge is. That is the basic
13 charge.

14 Now, if this witness was arrested as a
15 result of his prior appearance before the Grand Jury
16 and if he could not be made to go before the Grand
17 Jury, 1, unless he was given opportunity or 2, unless
18 he voluntarily went, then why would Gerry have to try
19 to get him to lie before that Grand Jury? Because
20 if he was given immunity, right, Gerry would know
21 that there was no -- he would have testified as to
22 the truth, and he testified that he wasn't given
23 immunity.

24 And if Gerry knew that he's voluntarily going,
25 Gerry would have no reason to try and get him to lie,

Kraft-cronsbick.

Because he was going in there voluntarily, to do what he wanted to do.

THE COURT: That is too far fetched. If this witness so testifies, that is one thing. If Gerry gets up and testifies to that, it is something else again.

MR. BOBICK: Now about an attorney gets up and testifies to the fact that he advised Gerry, he advised Gerry that a person could not --

THE COURT: Did you advise this witness?

MR. BOBICK: Not he. F. Lee Bailey.

THE COURT: F. Lee Bailey advised this witness?

MR. BOBICK: That one.

THE COURT: That is for his testimony in his case, but not through this witness. He says he doesn't know this principal of law.

MR. BOBICK: But he does know.

THE COURT: He could not know.

MR. BOBICK: He does know that he asked for immunity.

THE COURT: Did not get it. His attorney told him he ought to ask for immunity.

MR. BOBICK: But he does know he didn't get it.

Kraft-cross/Bobick

THE COURT: Mr. Bobick, these are, even for this court, rather complex principles of law, with all due deference to yourself and Mr. Castellano's knowledge on the subject, and the knowledge that I have on this subject, they are not that simple. There are various occasions when a witness can be called before a Grand Jury, even after he is under indictment, to wit, when a Grand Jury seeks him to identify corporate books and records, for example.

This is a fairly well established principle of law; at least it was in the days when I used to be a prosecutor.

MR. BOBICK: There is no corporate books and records involved in this case.

THE COURT: He, himself, said his books at one point were seized.

MR. BOBICK: But he said that they weren't seized, but he told Gerry that they were seized.

THE COURT : So that this kind of inquiry raises all sorts of ramifications, as I see it, and it is not -- and the inference that you are trying to draw from this, I don't think is a permissible one to draw and put before this jury, given the answers of this man.

6 1 Kraft-cross/Bobick

2 MR. CASTELLANO: May I be heard for a moment?

3 MR. BOBICK: Well, could I bow to him?

4 THE COURT: It is Mr. Bobick's motion.

5 MR. BOBICK: I'm seeking all the --

6 MR. CASTELLANO: Judge, involves the interests
7 of my client.

8 THE COURT: All right.

9 MR. CASTELLANO: Therefore, I ask if I could
10 be heard?

11 Unequivocally in this case, your Honor, the
12 knowledge that this man has and the knowledge that
13 that man has (indicating) is most material to the
14 interest of that man, Mr. Gerry, and my client, Mr.
15 Turcotte.

16 THE COURT: What this man Gerry wants to testify
17 to on his examination is one thing. If he wants to
18 get on the witness stand and make the statement in
19 summary form that Mr. Bobick has just said, he will
20 be permitted to do so.

21 But this man has testified that he has no
22 knowledge of the law on this subject, and I am
23 not going to charge him with the knowledge of the
24 law on this subject just because he has had one or
25 two prior convictions.

Kraft-cross/Bobick

MR. CASTELLANO: I maintain that your Honor is not being asked to charge him with the knowledge of the law. It's only that Mr. Bobick asks him certain questions and wants to ask him before the jury, so that this jury can understand, fairly and squarely, what was in this man's mind and what he had told Mr. Gerry, so as to be able to determine the very simple fact of whether or not Mr. Gerry alone, or in concert with Mr. Turcotte, sought to influence his testimony.

Now, if unequivocally, in both their minds, there was no thought of his ever going back to the Grand Jury, this is a very material matter. This should be brought out to this jury, and if your Honor decides against it, it's fine.

THE COURT: But all you have to do, and all -- he had asked this witness whether he anticipates -- anticipated going back before the Grand Jury, and he said, "Yes."

Given this answer, I think you are stuck with it, is what I am saying.

MR. CASTELLANO: I take exception.

MR. BOBICK: Your Honor, when did he expect to go back before the Grand Jury? We asked that

Kraft-cross/Bobick

question.

THE COURT: He says he did not know.

MR. BOBICK: The question was, your Honor -- well, we heard Mr. Wilkinson say that they didn't know when he was coming back.

THE COURT: He says he did not know.

MR. BOBICK: He said he did not know.

THE COURT: He said he was notified sometime in September, to come back.

MR. BOBICK: Right, September. But we're talking with the obstruction in August.

THE COURT: That does not mean he did not expect to go back.

MR. BOBICK: But it does not mean that anybody else expected him to go back.

THE COURT: That is for them to testify.

If he says that Gerry told him, listen, Mr. Kraft, you're never going to have to go back before that Grand Jury, because you now have immunity and by virtue of having been arrested, if Mr. Kraft admitted to some such conversation as that, I would allow all that stuff in. But that is not what he says. There has been no such testimony.

He said he did not understand this principle.

Kraft-cross/Dobick

Whether he did or not, is something for the jury, perhaps, to determine.

But as I understand it, once Mr. Gerry has testified --

MR. SHANLEY: Your Honor, I'd like to just state for the record, that this concept of witness was very well described in a series of cases which we gave to the Court, and to --

THE COURT: You will have an adequate opportunity, if the time comes, to brief this point. I think I am right on this point.

MR. SHANLEY: There is no question, your Honor, that it is not necessary for one thing. It is not necessary that a subpoena -- that a witness be subpoenaed in order to be considered a witness.

THE COURT: His point is more narrow than that. He is saying that once he is arrested, he cannot be forced back before the Grand Jury. Both of these individuals knew that fact, and, therefore, there is no reason for any attempt of obstruction of justice.

According to Mr. Kraft, he did not know that fact. It may be that Mr. Gerry is a well educated lawyer-defendant and he knew this fact, but that

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1 Kraft-cross/Bobick

2 remains to be seen later on in the trial.

3 MR. CASTELLANO: In effect, your Honor, you're
4 forcing Mr. Gerry to testify.

5 THE COURT: I am not forcing him to testify
6 at all. This witness has testified he did not
7 understand this principle.

8 MR. CASTELLANO: Well, I submit --

9 MR. BOBICK: Your Honor, may I read you part
10 of the transcript of April 4?

11 THE COURT: August 4?

12 MR. BOBICK: August 4.

13 THE COURT: Where is it? The beginning or
14 the end?

15 MR. BOBICK: Toward the end, your Honor. It's
16 right before the chicken fight in Puerto Rico.

17 THE COURT: All right.

18 MR. BOBICK: About 6, 7 pages back.

19 THE COURT: Is it "I'll tell you why this --"

20 MR. BOBICK: It's past that, your Honor.

21 THE COURT: Where is it?

22 MR. BOBICK: This one here (indicating).

23 MR. CASTELLANO: What page?

24 THE COURT: "I didn't speak much to him."

25 MR. BOBICK: Yes. "I was in Puerto Rico"

11

1 Kraft-cross/Bobick

2 Gerry says on the bottom. Right?

3 Now, this is, according to the transcript,
4 this is Mr. Kraft testifying or talking.

5 MR. SHANLEY: What page are we on?

6 MR. CASTELLANO: 381 of the old transcript
7 and some other number of yours.

8 THE COURT: I do not see that has anything to
9 do --

10 MR. BOBICK: He says, "I worked in that plant
11 four in the morning ..."

12 He says, "Now that he's back and he's back and
13 now things got better, I called the lawyer and I
14 say, well now, you can get me squared away and find
15 out what's going on. I didn't know anything that's
16 going on when you called me and you said what's
17 happening, and I said I don't even know that. That
18 was -- that was that a week later, exactly."

19 THE COURT: So? What does that have to do
20 with it?

21 MR. BOBICK: Where does there say anywhere
22 in this transcript, your Honor, that this man
23 was going before the Grand Jury or spoke about --

24 THE COURT: It is part of your argument, but
25 he says now, whether he said it then or not, he says

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Kraft-cross/Bobick

now that I was expecting to go back before the Grand Jury.

You are trying to invoke a principle of law which he disclaims knowledge of, to show that by reason of his knowledge of it, he could not have been anticipating going back before the Grand Jury.

I do not see it, gentlemen. Maybe you can show me some authority to permit you to do so, but I think it is error to allow that.

You are pre-supposing something that does not exist; namely, knowledge on this witness' part of the principles of immunity.

MR. BOBICK: But, your Honor, you're pre-supposing that this witness knew on August the 4th, he was going before the Grand Jury.

THE COURT: The evidence in this record shows that the foreman directed he be back on May 29th, and then they did not get him back on May 29th, and that is the only positive evidence that I am certain of at this point.

MR. BOBICK: And also that he was subsequently arrested.

THE COURT: I will take this much judicial notice, that normally, when a person is not -- is

1 Kraft-cross/Bobick

2 called -- given a date, and then that date is
3 adjourned, one of two things may happen. They may
4 not get him back. They may get him back at a later
5 date.

6 Subsequently he was arrested. It may well
7 be that in connection with that arrest, the FBI
8 indicated that if he cooperated, he would be able to
9 get certain additional testimony and then he would
10 go back.

11 MR. BOBICK: Your Honor, I think at that point
12 there should be an offering by the Government to show
13 us where anywhere, along any of the 3500 material,
14 any of the FBI reports or anything else, that there
15 was an indication in that paper that he was going
16 back before the Grand Jury.

17 THE COURT: He went back in September.

18 MR. BOBICK: Subsequently, in September, he
19 went back.

20 The question is, did he think or was he told
21 prior to August the 4th?

22 THE COURT: I do not think it makes any
23 difference.

24 THE WITNESS: Your Honor, can I answer that?
25 I got a -- I got a -- an excuse, because my son

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TRANSCRIPT OF PORTIONS OF GERRY'S CROSS-EXAMINATION
(POINT III)

Gerry-cross/DelGrosso

985

During the conversation on August 4, 1973, did you ever mention or was there ever mention of an individual by the name of Connie?

A Yes.

Q And do you know who Connie is?

A Yes, I do.

Q Who is Connie?

A Connie is a girlfriend of mine that was betting on Supers at that time.

Q Was Connie called before the Grand Jury; to your knowledge?

A Yes, she was.

Q And was she subsequently arrested?

MR. BOBICK: Your Honor, I'm going to object to this at this point.

THE COURT: I will allow it, credibility if nothing else on it.

MR. BOBICK: Credibility?

THE COURT: Credibility.

A Was Connie arrested? Yes, she was.

Q Do you know what she was arrested for?

A Cashing tickets under a false name.

Q And was she subsequently brought to trial?

A Yes, she was.

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Gerry-cross/DelGrosso

MR. BOBICK: I'm going to object to this, your Honor.

THE COURT: No, up to now it is all right.

BY MR. DEL GROSSO:

Q Was she subsequently brought to trial?

A Yes, she was.

Q Now --

(At this point, Mr. Bobick rose in the Courtroom and then sat down.)

Q Was she represented by an attorney?

MR. BOBICK: Objection.

THE COURT: Do you know whether she was represented by an attorney?

THE WITNESS: Yes, she was.

Q Do you know whom she was represented by?

A At that time?

MR. BOBICK: Objection.

Q At the time of that situation.

THE COURT: I will allow it.

A Mr. Bobick.

Q And -- all right, before, was she represented by an attorney, an individual prior to Mr. Bobick?

A Yes.

Q Who was that?

A49

EK:jm
T3amR3

Gerry-cross/DelGrosso

10 2 A The same lawyer that David Kraft had, Green --

3 Q Mr. Greenspan?

4 A Yes.

5 Q Had you ever discussed her legal difficulties
6 with her and her attorney, Mr. Greenspan?

7 A Yes, I did.

8 Q And then as a result of those discussions, did
9 you advise her to go to Mr. Bobick?

10 A Yes, because he wanted her to lie --

11 Q Did you, yes or no?

12 A Yes, I did.

13 MR. BOBICK: At this point I object to any
14 further going into this topic of conversation.

15 THE COURT: We haven't gone any further yet,
16 Mr. Bobick.

17 MR. BOBICK: Yes, but I ask advice from the Court
18 to the prosecutor not to proceed along this line, I
19 would ask for --

20 THE COURT: I would like to see what the next
21 question is.

22 BY MR. DEL GROSSO:

23 Q Now, do you know whether or not Connie Rogers had
24 been convicted --

25 MR. BOBICK: Objection.

ASO

Gerry-cross/DelGrosso

THE COURT: I will sustain that objection.

Q Now, Mr. Gerry, during the time that you were talking to Mr. Kraft, did you know there was an investigation going on concerning the Superfectas?

A Yes, I did.

Q You did?

A Yes.

Q And did you know that the FBI was involved?

A Yes, I did.

Q Now, have you ever -- was your name brought up in the investigation?

A Yes, it was.

Q Now, at the time you spoke with Mr. Kraft on August 4, 1973, did you know that you had been implicated?

A I had known my name had been brought up, but they never called me to the Grand Jury.

Q Right, but you knew your name had been brought up.

A Yes, sir.

Q By the FBI?

A Yes, sir.

Q And you knew the FBI was involved as an investigator for the Grand Jury for which Mr. Kraft was called; did you not?

A That is right.

ASI

Gerry-cross/DelGrosso

11a

Q Now, had you ever been called to the Grand Jury?

A No, not on this case, no.

(continued on next page)

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CROSS-EXAMINATION

BY MR. DEL GROSSO: (Cont.)

Q Had you ever been involved in a prior occasion in a race fixing scheme?

MR. BOBICK: Objection, your Honor.

MR. DEL GROSSO: Can I have a side bar, your Honor, I will explain it.

THE COURT: Yes, I would like to have a side bar.

(The following occurred at side bar without the hearing of the jury.)

THE COURT: Your question, when you say prior race fixing, prior to the one he was involved in here?

MR. DEL GROSSO: Yes, sir.

Now the reason why --

THE COURT: I don't know!

MR. DEL GROSSO: If I can explain, your Honor:

Your Honor, I have an awareness of this witness, that he made statements in the August 4th recorded conversation, he referred to prior difficulties he had with twin doubles and that he had --

MR. CASTELLANO: But is Elden Turcotte in it?

MR. DEL GROSSO: Excuse me.

That he had been called to the grand jury and

1 2 Gerry-cross/DelGrosso

2 he mentioned the scheme, how it worked, he said the
3 problem was that we had all been together in motels,
4 we were brought to the grand jury and they had us, now
5 this time I didn't do it that way, I went to A and I
6 went to B --

7 THE COURT: Yes, all right --

8 MR. BOBICK: There was never --

9 MR. DEL GROSSO: This is a consciousness of
10 guilt as to the obstruction of justice.

11 THE COURT: I think it is proper.

12 MR. BOBICK: I move for a mistrial, there was
13 never any mention.

14 (The trial then proceeded within the hearing
15 of the jury.)

16 BY MR. DEL GROSSO:

17 Q Now, Mr. Gerry, I ask you -- strike that.
18 During your conversation with Mr. Kraft on
19 August 4, 1973, --

20 A Yes.

21 Q -- did you ever discuss any prior difficulty
22 you had with twin doubles?

23 A I told him there was an investigation in 1966
24 of the twin doubles?

25 Q And that you had been before the grand jury at

3

Gerry-cross/DelGrosso

that time?

A Yes, but it was not about race fixing --

Q Had you been before the grand jury at that time?

A Yes, I had.

Q And were you accused of race fixing?

MR. BOBICK: Objection, your Honor.

A No, that is -- I was not.

THE COURT: The objection is sustained.

MR. BOBICK: I withdraw the objection in face of the answer.

But no, I object to it anyway, your Honor.

THE COURT: The objection is sustained.

BY MR. DEL GROSSO:

Q Did you discuss with Mr. Kraft at any time the advantage of an immunity?

First of all, do you know what immunity is?

A Yes, I do.

Q All right.

And is that -- can you just explain it to the best of your knowledge?

MR. BOBICK: Objection, your Honor.

THE COURT: No, I will allow it, I will allow it.

A I think there's a big controversy of what I

4

Gerry-cross

don't know.

Q Of the Superfectas?

A That is right.

THE COURT: Who told you.

THE WITNESS: I do not know what investigative body it was.

Q You were in this Superfecta, you said you had a business arrangement or a betting arrangement with Mr. Kraft?

A Yes I did.

Q Did you have it with anyone else?

A I was betting with other people at that same time.

Q You had business arrangements?

A Well, yes, if you want to put it that way.

Q Were they partners?

A We would buy sometimes, partners sometimes, they would purchase tickets for me or themselves or sometimes we would purchase them as partners.

Q So there was more than one person?

A Yes.

Q Can you identify those persons?

MR. BOBICK: Your Honor, do you think I should object to this?

5

Gerry-cross

THE COURT: Mr. Bobick, I do not have to tell you when to object.

MR. BOBICK: I do object, your Honor.

THE COURT: I will allow it.

MR. BOBICK: Including the names of the people?

THE COURT: Yes.

MR. BOBICK: I object to it, your Honor.

A I bought tickets with quite a few different guys as partners, I would be at the track --

Q I do not mean to interrupt, I do not want to be rude.

MR. BOBICK: Then don't do it.

THE WITNESS: That is about the best way I know how to answer your question.

THE COURT: Do you know the names of anyone who you were partners with?

THE WITNESS: Yes, some of them.

Q Can you give me those names?

A Joseph Pullman.

Q Yes?

A Seymour Rothstein.

Q Yes?

A Connie Rodgers.

Q Yes?

6

Gerry-cross

A They was the main ones.

Q Any others?

A There were other people but nobody that I can --

Q Give us the names?

A I can't remember the names.

Q You can't remember the names?

A No.

Q You do not know any of the names?

A I can't right off quick think of any but there was a few others that I had bet Superfectas with.

Q How much money did you yourself spend on the Superfectas?

MR. BOBICK: Objection your Honor.

THE COURT: Wait a minute, I think Mr. Castellano opened the door on this question without any objection. I will allow it.

MR. CASTELLANO: I object, your Honor, to your Honor's statement that I opened the door. There is no way in the world for me to open a door as against a client of another lawyer.

THE COURT: You opened the door and he did not object to it at that time and I think the prosecutor can ask the question.

(Continued next page.)

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MM:bd
Saml

Gerry-cross

MR. BOBICK: I would like to put something on the record, your Honor.

THE COURT: All right.

(Side bar discussion out of hearing of the jury.)

MR. BOBICK: I seriously object to the prosecutor winking in the presence of the jury and let him deny that he did.

THE COURT: I have not seen him make one single motion towards that jury at any time during the case.

MR. BOBICK: Ask him.

I think he is man enough to admit.

MR. DEL GROSSO: I winked at Mr. Shanley.

THE COURT: Come here, Mr. Bobick.

You must learn how to control your temper and emotions in a trial of this kind. I don't know how many times you have blown your top and I ask you to refrain yourself.

MR. BOBICK: He just admitted that he winked at Mr. Shanley.

MR. DEL GROSSO: He said I winked at the jury and intimated --

MR. BOBICK: I just said you winked.

THE COURT: He winked at Mr. Shanley and that is not winking at the jury. I have been watching through-

Gerry-cross

out this cross-examination and as far as I am concerned I have seen nothing.

MR. BOBICK: You may have turned your head.

THE COURT: I may have.

MR. CASTELLANO: I would like to indicate that you are handling the cross-examination entirely different now than you handled it on our cross.

THE COURT: Well, --

MR. CASTELLANO: If you will permit me to complete the statement.

I say that you are letting this prosecutor cross-examine this witness as to matters he has no right to go into and this is distinguished from the way you permitted me as an attorney and Mr. Bobick as an attorney to cross-examine their witnesses.

As a matter of fact you even permitted them over objection to ask this man whether he had been accused--

THE COURT: Well, I sustained that question.

MR. CASTELLANO: He answered it and you didn't let him stop.

THE COURT: Before we got through with the objection I sustained the objection.

(In hearing of the jury.)

Gerry-cross

BY MR. DEL GROSSO (continued):

Q The last question I asked you was how much money you spent on the superfecta, if you know.

A It would be hard to tell.

Q Can you approximate it?

A I cannot.

Q Was it more than \$10,000?

A Over the period of time?

Q From approximately January through April 13 of 1973.

MR. BOBICK: I object on the grounds first of all it is out of the date of this indictment and second it doesn't say how much he lost, just how much he spent.

MR. DEL GROSSO: I object to those statements before the jury.

THE COURT: Your objection is overruled.

MR. BOBICK: On the ground it is irrelevant as to form?

THE COURT: On both grounds.

A I would have to explain it.

Q My question is can you approximate it and you said you don't know. I asked you was it more than \$10,000.

A We used to bet that in one night.

Q Every night?

Gerry-cross

A No.

Q Were there ever any nights where you bet more than \$10,000?

A Yes.

Q Or individuals who you gave money to bet for you?

A Yes.

Q There were times you bet yourself and also individuals who bet for you?

A Yes, bet with me as partners.

Q Can you approximate the amount of money to exceed a half a million dollars?

MR. BOBICK: Objection. I move to strike it out. There is no evidence and no foundation.

THE COURT: I will sustain the question as to form.

MR. BOBICK: I move to instruct the jury that when a motion is sustained or an objection is sustained that the question should be stricken too.

THE COURT: The jury should disregard any question when an objection is sustained to it.

Q Did the amount exceed a half a million dollars?

A I don't know.

MR. BOBICK: Objection.

THE COURT: Overruled.

Gerry-cross

THE WITNESS: Some nights we bet \$5,000 and some nights \$15,000, but I don't know what it all added up to.

Q One night \$5,000 and some night \$15,000. That was from January 1st to April 13 and that is approximately six days a week?

A We didn't bet every night.

Q This is just you, Connie Rogers and Joe Pullman and David Kraft and Mr. Rothstein?

MR. BOBICK: And several others whose names he didn't remember.

A That is right.

Q The several others, can you approximate how many individuals they are?

A Different nights it would be different people. If I should meet you at the track and you would say let's go partners I would say all right and we would put up whatever money we had.

Q You would come up to me without knowing me?

A Well, everybody knows me at the race track and they would ask to bet as partners.

Q Would it be fair to say you bet with maybe 100 people other than the ones you have already named?

A Approximately 40 or 50. In a sense here was one man, the man who was here, Mr. Murphy.

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Gerry-cross

Q Were they on a regular basis?

A No, at different times.

Q Can you explain by different times?

A As I explained, if I met somebody at the track and they knew I was betting supers, and I was betting supers and they were, and they wanted to be partners.

Q Was David Kraft a partner with Connie Rogers?

A Not to my knowledge.

Q Did he ever ask you about Connie Rogers, her reliability?

A Yes.

Q Did you tell him he had nothing to worry about?

A That is right.

Q Because she never saw you talk to any drivers?

A I don't remember that in those words. I talked with every driver every day. It is just she wasn't with me.

Day after day I talked with drivers and found out what they liked and what they did not like.

Q Did you have any 'contact in the district attorney's office?

A No.

Q Did you ever tell David Kraft that you did?

A Not that I know of.

Q I refer you to a conversation you had with

A64



TRANSCRIPTS OF TAPES - THE AUGUST 4, 1973 CONVERSATION

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

Reply, Please Refer to
No.

The following conversation took place on August 4, 1973, in the office of David Kraft, Farmingdale, New Jersey. At 6:11 PM, Forrest Gerry drove into Kraft's farm, got out of the car, and went in with Kraft to the office. The following is a transcription of the conversation between the two men as monitored by Special Agent Sean P. Hilly:

DK: David Kraft
FG: Forrest Gerry

DK: I got to make a call yet. I'm supposed to call back let me get it over with. He wants to make it tonight I don't know when I'm gonna get 'em.

FG: Call up the Bear, the Bear.

DK: Uh, Bear...may I speak to...thank you...I'm still working on that...no, no, no, no, no, no, I just I haven't got anything set yet wait a minute who, who. Ok, I, uh, well, I wanted to refer back to what we were talking about, I already told you I'm gonna let you know, try to get you something in a half an hour well I'm still trying to locate somebody who knows what the hell I'm doing. Right, apparently nobody's home. No I don't know, how long do you want me to keep trying? Oh..... All right. I know Saturday night and Sunday you want to catch that plane at 2:00 tomorrow at Newburgh, right? All right, I'll find somebody that knows what the hell, whether we, who's got the rights to go in there...we got enough work now.

FG: You're busy, huh?

A65

DK: Oh yeah.

FG: Making all kinds of money.

DK: Well, we make, we work hard for it, Gerry.

FG: Yeah but long as you, long as you can make it.

DK: They pay us well.
Yeah who told you I got a
...close this.
Who told you I got, I got pinched.

FG: Ah, this guy by the name of Seymour. He told
me the Bear told him. I wonder how Bear knows.

FG: *DK*

DK: Well....
I didn't think it was in the newspapers.
Didn't want it to be.

FG: Guess it wasn't in the newspapers and so *mf*
how Bear knew I didn't know that you him
Bear, may have told Bear yourself

DK: No.

FG: Did you ever meet Bear down anytime in his
office or anything. Have you ever talked
to him;

DK: Not since then, no, no.

NY 172-90

FG: You talked to him before that?

DK: Yeah, I saw him down ah driving to the track one day, pulled into my place with a truck.

FG: What'd he have to say?

DK: Well, he said he's trying to get immunity and he's find out what the he the guys over there.

FG: Well he's told 'em everything he knows, that's what he done.

DK: Yeah, he has immunity?

FG: I, I don't know if he's had immunity yet, I don't think he's got immunity. But in order for them to give you immunity, you have to go in and sit down with them and tell them everything you know they if they feel as though that you know enough then they'll give you immunity. That's how they work. So he's standing in it and as far as these things that they've asked people and brought up that nobody else knew besides Bear. So he's had to tell them. So for him to tell them small things he'd have to tell them whatever practically he knew.

DK: Yeah.

FG: That's the way I feel... 'cause I asked him after he was in to the FBI Office for, for four hours and he was hemming horring like he hadn't been so finally I put it right to him I said look I know you was into the FBI Office... for four hours yesterday to answer questions now what was the story? Well he said ah you know if I told them everything I know I can't hurt anybody, so he said I'm just trying to make a deal for myself he said I wanna... I said well I don't know what the hell

Seat on The Bus

NY 172-90

- FG: you're talking about. You think ah well he says, they've got me with four different people saying that I gave them tickets to cash, so, he says, if I can get those charges dropped against me, he says, and tell them what I know he said I wanna do it....I've talked to you....So anything he knows, thats why I told you when I'm down here anything he knows against you, you want to make sure if they figure that they know it. So what did you do go in and sit down and have a talk with them.
- DK: No they locked me up, so.
- FG: Yeah, but I mean you must of had to talk with them...
- DK: Oh the first time, that time I was over there with first time I went over there I was subpoenaed.
- FG: Yeah.
- DK: And I had that lawyer so they, they asked me he said ah, they asked me two questions and that's when I walked out of there at about the third question and I said ah did you ever, they asked if I ever cashed a ticket I said yes one. I remember somewhere way back in my mind that I did cash a ticket in January some place and I don't remember now I finally remembered what it was I cashed a ticket it was only a, ah, \$800 one or something it was something like you know I couldn't remember but I did say yes. That one. Then the third question I asked them to let me go out and talk to the lawyer. I went out. After that I never went back no more. And I kept telling this lawyer to let, that I had trouble with my kid and I, leave me alone I said work a

NY 172-90

DK: deal or something I don't know what the hell but they weren't, they weren't looking to bother me at all after that they just...when my boy got well come back to work. I come back to the office one afternoon at 12:30 there's three of them waiting for me and they, you're under arrest for perjury. What do you mean perjury I didn't say nothing. You perjured, well we'll show you when we get there. And when we got there they brought out a statement and this girl in Staten Island, the head of the office there

FG: From the OTB office.

DK: OTB office said that she seen me there, buying tickets and cashing tickets, 's what she said. Was in there many, many times.....you were there many times. Now where your other tickets that we, we have a sequence of tickets that you purchased in here and we're gonna go through all these tickets. So I said well I want to see my lawyer. FBI got enough....Meantime I was fingerprinted and logged by that time he got there. Then, then there was a discussion of bail, well I own this I own property here I own that and all that so they it was getting late....by the time I got to Brooklyn and got all this shit straightened out it was....The whole thing the lawyer started crying a little bit and the District Attorney agreed on and all that, and when we got outside I said to this lawyer....*I don't know if* and he said when you called me I assumed.....know which way he was going.

FG: Well I was gonna change over.

NY 172-90

- DK: Well I think I gotta, I gotta change lawyers too 'cause I don't know where this guy is at and ah I gotta find me somebody in New York that's pretty sharp that I can get straightened out 'cause one of the questions that bothers me that they kept throwing at me this don't bother me too much because....., is that they're gonna take sequence of all the tickets that were purchased by me and this girl can verify, she must have went through some hell of a job with tickets.
- FG: They haven't been through that much for one thing for another thing is a good lawyer would tear her apart. How could she say that on the fourteenth of April that you was the one that was in there buying tickets or the sixteenth of April or the nineteenth. You did go in there quite a few times and bought tickets but as far as the exact date.... according to my lawyer there's no way that she could
- DK: Well, meantime this is what I'm standing on then the other thing is the tickets that I gave you for the men for the drivers, did you cash them or did they cash them because they're gonna down every ticket.
- FG: I had nothing to do with the drivers.
- DK: Did you cash them for them or did you give it to them?
- FG: I sh, had 'em cashed 'cause I gave them money every time.
- DK: OK
- FG: There's no tickets it's been handed to them, I gave them money....

NY 172-90

DK:I'm assuming that they can lay this down.
If they can really put the picture together that's
why I asked you if you knew what the hell you did
with the tickets I don't know myself because they're
all numbered and mathematically.

FG: I had told you that, that last Sunday that I was
down here before we start playing on the last
Sunday and I said the only worry that we got is
that we ah wasn't smart enough to know that these
tickets are numbered and who cashed what in what
series so I said we could be in trouble so we
gotta watch...that's the first time that a lawyer
had told me anything about that but I don't know
I mean there's always ah, there's always an excuse
if you gave me a ticket or two if it was me that
cashed cashed 'em or I had someone cash 'em but
when I talked with you on the telephone or when
I talked with you I liked ah six horses and we
come to a conclusion that you like the same six
horses I just said I can't get the OTB box them
ones for me so when you saw me you gave me the
ticket right? If it were and I paid you're say
it's a thousand eighty dollars I paid you the
thousand eight dollars I cashed my own ticket or
whatever it was or....it wasn't he that got the
tickets you don't know where the hell right? Is
that good enough?

DK: Yeah it sounds, hey look I'm no lawyer.

FG: Look but I mean you know

(Inaudible) (IA)

NY 172-90

- DK: I'll, I'll go by anyway you say I'm listening to you because I wanna
- FG: Well that's what I am
- DK: What are you gonna what what.
- FG: That is what I, look I wouldn't answer one question there's no way they're gonna get me on perjury 'cause I know what they're trying to do and I'll tell you just what they're gonna try and do with you. Just like they tried to do with everybody else. They try to arrest them on any little technicality because it it's gonna stand I mean they don't care they know they never gonna convict you on perjury but they want to worry you with that so that sometime or other pretty quick they can come to you and say look we're gonna make a deal with you. You tell us what you know about this and that and this and that and we'll drop that perjury charge against you, you see? So that's what they done with everybody. People have walked into the Grand Jury and answered two or three questions, walked out, they put handcuffs on them, they arrest them....perjury, they arrest 'em for conspiracy one thing or the other they arrest them for. Of the hundred people that they have arrested, ninety of them don't know what it's for. They arrested one guy for conspiracy and he's asked them and he had a lawyer ask them conspiracy for what? They said you know. But he he doesn't know and he's truthful.....but they figure later on they're gonna come to him and say look we've got you on a conspiracy charge, you tell us what you know about this and we'll make a deal with you and we'll drop the charge we got against you. Well it scares everybody when they get arrested you know they think that they've got something against them. I mean like to me I can see what the hell they can arrest you on what did they arrest you on? What

NY 172-90

DK: I just finished telling you

FG: Huh?

DK: I just told you

FG: That you told 'em you cashed

DK: One ticket

FG: Yeah

DK: And he said I cashed many more

FG: Well how many tickets did you cash?

DK: One ticket

FG: Huh?

DK: One ticket

FG: Yeah. Well those, what they've got is, is you cashing those other tickets you signing that other guy's name.

DK: Right

FG: So I mean ah that.....got straightened out in five minutes by talking to them. Say look I mean this man was in the hospital and you can check with him this is his ID and ah he had told me there's no way he could get to OTB to cash 'em and I was signing his name give the OK er I mean if I were you I'd have a lawyer and have him sign an affidavit that he had give you permission in case something happens to him.....can sign an affidavit and have it notarized that he had give you permission to use his ID and cash tickets for him.

NY 172-90

DK: Oh he's, he's sick

FG: Yeah but does that make sense? Because later on ah, if, if he isn't around to testify or help you out with it and they say that you cashed tickets and under his name and without his knowledge ^{that I} authorization you could be in trouble. ^{and} But that's ^{see} what they try to do, everybody that goes in there ^{you} an answers any questions they get him one way or ^{are n} another so like RONNIE I know she hasn't answered ^{any hand} one question in front of the Grand Jury. They made a deal with that lawyer for her to come down and answer questions in front of the FBI and he knew enough that they would take, give her immunity and drop all charges against her. But the they had told her told the lawyer before she got there. We want to know dates and times and we want her to say that races was fixed that she knew this guy was gonna win and this guy was gonna be second this guy was gonna be out of the money that that's what GERRY had told her. Well she couldn't say that. I mean she'd have to lie to say that. So without her going and telling them everything she knew there's no way that they're gonna give her immunity well I mean even if they if, she could tell them everything that she knew exactly. I mean what we ^{But} ~~back~~ who cashed and she could tell them everything she knew and they wouldn't give her immunity. What could she tell them.

DK: What what do you mean she couldn't tell them a lie she could tell me on the phone who was staying out and who was staying in that she just got it from you. Now if she wasn't gonna keep her mouth shut, she didnt.....hurt you.

FG: What?

NY 172-90

DK: If you say she don't tell them. If she was going to tell them what she was telling me on the phone, if she could tell them what she really knows.

FG: Yeah.

DK: She could.....

FG: She don't know, she don't know.

DK: Why don't she know?

FG: How could she know?

DK: Was she lying when she told me what, what we were when we were making these bets?

FG: How could she know what is happening with ~~the~~ any drivers or anything else?

DK: Because you told her.

FG: There's no way that ah that I told her anything.

DK: Ooh.

FG: There's no way that I'm gonna tell her if I had done anything with anybody there's no way that I'm gonna tell her. I can tell her I didn't like the four and I didn't like the six that I was leaving them out, boxing the other six or something else but as far as ah, her being with me when I talk with anybody or, or doing anything there's no way.

DK: She was never with you when you talked to those guys in the

NY 172-90

FG: Never in my life.

DK: 'cause I'm afraid of her.

FG: Don't worry one bit, don't worry one bit, you haven't got to be worried about her one bit. She is smarter ten times over than Bear, she has not answered one question you know why, 'cause they wanted her to go in and answer some questions so they could arrest her on perjury or conspiracy like they did you. If she'd gone in she'd of answered three questions no matter what they was they was gonna arrest her for something then use that as a pry a pressure for her to tell them what she knew. You have got no worry at all about her whatsoever she could tell them to me she could tell them anything she wanted to tomorrow and there's no way that she could hurt me or hurt you. A hundred percent, bank your life on it.

DK: 'cause you know when she was talking to me with DEL and using names that would, would rock you.

FG: Yeah.

DK: And so, I was just wondering how long, how, how, strong she can she stand up.

FG: There's no way that she could, if she could tomorrow say that BILLY HAUGHTON and STANLEY DANCER and GEORGE SHOLTY and all them had told me or I had told her that they was gonna be out they wasn't in ah, the race that was fixed it wouldn't have anything to do with her, I mean what the hell would her word have to say, I mean what we would have to

NY 172-90

FG: do is find out if HAUGHTON fixed the race and if he did tell me this I mean ah she could just be making anything up, there's no way if, if she fixed that in her mind there's no way she could prove that. Which she wouldn't say that anyway because she had told.....as far as me saying that some drivers was fixed or races was fixed I tell you anything else I know but as far as me saying that I wouldn't lie.....and she said I'd have to lie for me to say that because I don't know that. So I mean to me ah, but Bear I mean he would say that just to try to get himself off, he would say that ah DEL fixed a race or GILMOUR fixed a race or anything else and he wouldn't know 'em to talk to 'em. He wouldn't know ah one of 'em to speak to but he would say that to try to get himself off, I know he would. So I would, I expect that from him. Whether he does or not I don't know.

DK: Well I told you the last time I saw him he was driving a truck.

FG: Yeah. But I expect that from him but it wouldn't bother me if he did. I mean he can say that ah SHOLTY told me that he was gonna be out of the money, the race was fixed but, everything else and they say he's I mean a a lawyer just asked him ah or the District Attorney was you there did you hear this statement, did SHOLTY tell you that? Now what's he gonna say? I mean he never was

DK: (IA)

NY 172-90

- FG: But that's what they're just trying to do I mean they're just trying to break everybody's balls they think that probably you know more and you know and they're trying to get you to they think that you probably talked with some drivers or fixed some races and then pretty quick they'll come to you and say look you tell us what you talked with any driver about and we'll drop the charge against you. That's what they're gonna try to do to you. But it seems though that they would have talked to your lawyer first and told him what they was gonna do you know, but they ain't, they just try to be a prick about it. Because I don't know what you did answer in the Grand Jury but it, but it
- FG: (IA)
- DK: (IA)
- FG: Huh?
- DK: I only answered answered about three questions 'cause the third question I said wait a minute I got to go see the lawyer.....but they didn't know I had a lawyer. But you know.....
- FG: Well you shouldn't have answered any questions. Should have took the fifth in the first place
- DK: But thats besides the point, the thing is that they picked me up and in these and I don't know how much they can how bad this thing can get

NY 172-90

DK: money-wise and.....I don't know what OTB can say about the betting and the tickets, the series of tickets, the series of tickets that I.....They can tell the tickets that I cashed, against the tickets that I gave in exchange like you said.

FG: Uh huh.

DK: Now the tickets....you stripped some tickets out of here like three tickets for three drivers.

FG: Uh huh.

DK: You took three tickets from here, they're gonna be cashed somewhere else. Who cashed them?

FG: Uh huh.

DK: They're gonna pick up who cashed them.

FG: Uh huh.

DK: You gotta know who cashed them.

FG: I don't know.

DK: You don't remember, you could never figure it out? Because oh where where you're, where you're gonna need a little, this woman said that, say she knows.....

FG: Uh huh.

DK: He couldn't say she don't know.

NY 172-90

FG: She can't say that you cashed any more tickets than you did cash in fact really you didn't cash any tickets not in your name for yourself did you?

DK: No. It's the one that I told you. I, I, I couldn't for the life of me remember when the hell I cashed one I knew then after thinking about it much later ah you know a week or so later I remembered it was below the amount of money that you didn't even have to sign for it I, I remembered that when they asked me that, I, first of all I think it wasn't even Monticello, that I picked out of the newspapers myself. And bet it when TALEN (phonetic) was out there. But you know there's just somethings I just couldn't say no to because I'd be ah afraid of perjury just like you say, I, I don't want to get perjured then. I forget what the third question was....No wonder this guy came over to see me, said you're under arrest. Boy some.....I didn't bring it home I, I don't know where the hell it is I reallythen the lawyer.

FG: You must have gave it to your lawyer.

DK: Yeah he must have picked it up, but he let me read the paper and that's exactly what it said you know. This woman said she knows I cashed many a times, many times.

FG: Well you've got an alibi for that.

DK: Oh yeah I, I, I think I'm gonna be alright

NY 172-90

FG: Sure the tickets that you cashed many a time wasn't for you. And you can prove how you cashed them for another guy, right?

DK: Oh yeah I'm.....deliver.

FG: Sure that guy....that guy was in the hospital and ah he couldn't get over to cash the tickets, which you can prove he was in the hospital.

DK: Oh yeah.....

FG: (IA)

DK: Well I just.....you could use it if you wanted it.....

FG: Yeah but I mean I would have, you're cashing 'em for him and signing his name and ah you wouldn't 've been ah mixed up in that now.

DK: Huh. Never figured this thing was gonna go this far. But ah.....they worked me over a little bit that's all.

FG: They ask her any questions after.....

DK: Sure.

FG: Huh?

DK: Sure they asked every question in the book.

FG: What the FBI? Did you answer?

DK: Wait till the lawyer comes.

FG: Huh?

NY 172-90

DK: Wait till the lawyer comes. Wait till I see the lawyer and then some more. I guess.....

FG: Well that's what they figured they figured you'd come in they ah you'd with the arrest that you'd be scared you'd sit down and talk with them for hour and you'd tell them everything, and you'd answer all the questions as you knew. And then, then they'd try to pick out of that what, which is right and what's wrong and what they could do about it you know. That's what they been doing. 'cause I know of guys that legitimately bought and cashed ten or twelve tickets and they've arrested them.

DK: They told me they're gonna pull in everybody, that picked up every single ticket eventually.

FG: They have practically. Practically everybody that's ever cashed a ticket from OTB. And a lot from the track they've brought in. And a lot of them ain't guiltier than Adam. They've brought 'em in and put 'em through that Grand Jury business and when did they get the information from and who told 'em to bet on them horses. I mean some poor guy that ah, huh.

DK:huh playing with kids.

FG: Oh of course, anytime.

DK:you're not playing with boyscouts here.

FG: Of course not anytime you fool with the FBI and ah that Strike Force, you're not fooling with kids, you're fooling with somebody that ah blossoms (phonetic) See look, what have you done wrong? What have you done wrong?

NY 172-90

DK: Well I don't know heh-heh, I'm as mixed up as you are. It's you that's mixed up, I ain't.

FG: Oh I'm not in the least bit. 'cause to me I haven't done anything wrong I've brought tickets and I've cashed tickets the only one thing I've done wrong is I did have other people cash some tickets for me. But, I had talked over that with a lawyer and he says that is not as of now against the law, because he said all what you got to do though is before April 16, get straightened out and declare ~~a~~ all the tickets that you cashed or had somebody else cash for you if they're gonna say they cashed them for you. Like if I had some guy cash a thousand dollars worth of. Uh! \$10,000 worth of tickets. If he's gonna say those \$10,000 worth of tickets was for me, I have to handle them on my income tax and put down that I won that much and then if I got tickets enough to show that I lost that much. If not then it's after April 15 it'll be a crime for Federal income, Federal income tax evasion. But it isn't Federal income tax evasion until after April 15, if you don't declare it. Now if you can't cash, right now you cashed a million dollars worth. For somebody else for yourself, anything, it isn't a crime. After April 15, if they find out that there was \$100,000 worth cashed for you by somebody else if you don't put it on your income tax then that's Federal income tax evasion. You understand what I'm saying.

DK: Who gave you this information?

NY 172-90

FG: BABICH (phonetic) the lawyer that I got now for CONNIE, because I told him I was worried about a guy. I told him the whole story about buying tickets, selling tickets, uh, uh, cashing tickets and I said I'm worried this guy that's cashed some tickets is going in and say, to make a deal with them that he cashed the tickets for me. He said don't worry about it a bit. He says all you gotta know is by April 15 which way he goes. If he says it was for him and if he's got tickets enough to show that he lost that much or he says they're for you, you gotta make sure that you put that extra on your income tax that you've won that much and that you lost that much or you won that much and you've got to pay tax on it. Now there's a Federal income tax was on as long as you report it. No matter who signed for the tickets, if it was yours and you report it it is not income tax evasion, but if you had somebody else cash them tickets for you and when it comes April 15 you've gotta put it on your income tax that you won that much money whether you can show you lost it or not. If you don't put that down then after April 15 they can come arrest you for income tax evasion and say JOE PULLMAN said he cashed \$100,000 worth of tickets he signed his name for you but they were your tickets then your in trouble. You understand what I'm saying? Which this lawyer that CONNIE's got never told me this before. He's told me I mean how much trouble I was in because whoever went in there and said they cashed tickets for me it was a felony each time that I give somebody a ticket to cash for me. According to BABICH, it is not. He says not one bit against the law as long as you report it by April 15. So I just gotta find out which sounds reasonable.

NY 172-90

DK: Well, like you say you better find out.

FG: Yeah, well he has found out, I mean he's the lawyer's he's checked into it.

DK: He says that what if is huh? That's, that's *that's his touchy ground* that's, that's his ground. That can be touched (unclear) I knew. I knew what you were up to is illegal about ever letting anybody cash it for you.

FG: Huh?

DK: I knew what you were up to.

FG: Yeah, well I understood right then that that was Federal income tax evasion that means you have somebody else cash em for you.

DK: Right.

FG: I figure that's income tax evasion and that's what I was going on until I talked to this lawyer and he says it is not.

DK: Or what, what. I don't want to upset this thinking or argue the point except that why don't you want to ask some guy to cash tickets for you and pay him a percentage and then report if if you weren't going to do that.

FG: But if you do report it, they cannot charge you with it I mean.

DK: Oh!

NY 172-90

FG: You know who is it? What they

DK: (Unclear) don't worry about it.

FG: Right, that's right.
If the guy says he cashed them for you OK. If he doesn't

DK: (Unclear) OK

FG: As long as you report it you're covered yourself

DK: No but you, you didn't, you didn't hear me. Why would you want to give a guy tickets to cash for you and pay him a percentage if your gonna report it. You might as well go cash it yourself.

FG: No, yeah, but you can have anything for a motive. I mean you could have, if you didn't want people to see you going OTB 'cause they was following you to see what you would back that's why you had other people back, why you had other people cash. Uh, I mean these are legit.

DK: Yeah

FG:million excuses why I mean if somebody is doing a service for you, why can't you let anyone do a service for you, but its not income tax evasion if you report the income

DK: You got a reason for it, huh?

NY 172-90

FG: Huh?

DK: You got a reason for it?

FG: Sure. The only thing, the only thing I was worried about 'cause that's the only thing I'm guilty of. That's the only thing I'm guilty of is that they could check and see that people is cashed tickets which they I guess hold already because there's been four thats ratted on him. As of yet not.....but they theres isn't one other guy that could say that they cashed tickets for me or had tickets cashed for me but where will they get all the tickets? I don't know. I gave them the tickets and you knew so. But I'm not worried about it now that this is happened.

DK: Maybe I'll bring up....

FG: How uh will anybody can call you. What can be, what can be covered. *come from* I mean uh like you, you made a foolish mistake that your gonna answer the first question and get yourself arrested for perjury. I mean by answering that you cashed you knew that that woman in the OTB would say that she knew who cashed tickets or bought tickets and you knew they was going to be checking with them. I mean uh to me you got a hell of an out because you can prove it was the other guy's name, that you were signing it under. What did the lawyer say about that?

DK: That what I saying gonna have to change lawyers. See I don't think he knows which end is up.

NY 172-90

FG: I told you that. Did you know he was telling CONNIE to help yourself even if you have to lie. He said to help yourself if you have to say that you knew the races was fixed or anything. He says that will get yourself off. Go ahead tell them that. He wanted her to know. I said to her whoah, wait a minute, I mean uh there is such a thing as saying something you know but uh uh good lawyer if your lying about it will twist you around thirty times. I mean who else you would you say that uh uh fixed the race, they would have a lawyer and a lawyer would say uh, did you talk to this person. Was you there? Did you know this was what happened? She'd have to answer no. I mean it would make her look foolish right?

DK: I don't know. Hum. You got all the confidence in her, I don't.

FG: Well let me tell you, If I didn't have confidence in her in this respect, uh, she would have immunity. She would have immunity and they wouldn't be after her and having a lawyer talking to the lawyer every two days on what they was going to do to her and threatening her with this and threatening her with that. If it was up to me uh I mean I'd have been through with everything with that other jerk lawyer the two of them. And I'd of been through with everything with this other lawyer that she's got now. And I mean if she told them the honest to God's truth I mean then she knows there's no way she can hurt me or you or anybody. I mean, haven't you got a right to pick out six horse out of eight or ten uh leave horses out or anything else.

NY 172-90

DK: I thought so.

FG: Huh?

DK: I always thought so.

FG: I mean has a race gotta be fixed. I mean any time you go to a track you bet on one horse the other seven don't ~~mean~~ to their not trying or anything else is it.

DK: I believe she, you don't have to sell me. I'm just.

FG: Yeah, that's what I'm saying.

DK: Uh, you know. I feel that there's a ^{weak} ~~loose~~ link somewhere 'cause uh.

FG: If they have anything the would've be blowing this thing wide open and arresting drivers and uh they close up the race track tomorrow.

DK: Well, this is what bothered me when I why asked you about those tickets 'cause why would they ask me about specific tickets that missing tickets that they could investigate down to three's, one's, two's, and run all the way down the line. They're gonna start taking individuals tie people in....know where you cashed it by what you see when you all come down there. But if you gave the tickets to anybody, they're in trouble.

FG: I ain't worried about it 'cause whoever I gave them to I mean will never come back to me.

NY 172-90

DK: (IA)

FG: Well they know who else.

DK: I mean.

FG: What?

DK: These people telling me that they're gonna take this OTB thing apart. (IA) God damn back sheet.

FG: Uh huh.

DK: It makes common sense to me, I, I have little business sense and you have you, you pretty sharp mind yourself when it comes to figures.

FG: Uh huh.

DK: But there's a possiblity that that can be done if they want to throw up the time to do it.

FG: Uhm.

DK: Just supposing who was playing with them small tickets.

FG: Nobody that's ever gonna ^{HURT} ~~hate~~ us. Nobody that's ever gonna have a thing.

DK:been to a driver of all 'cause there's a cello (phonetic) about that a driver was fixed with a ticket.

FG: None whatsoever.

NY 172-90

DK: That's it.

FG: None cash. None whatsoever.

Both speak (IA)

FG: Huh?

DK: What do I tell them. Yeah my eyeballs uh....
'cause I didn't know what direction they went.

FG: No, no driver got no tickets.

DK: How many, let's see how many did I, I had uh,
see my brother is very friendly with the New York
society you know and I didn't want to go there
because I represent too many too many rough people
and uh if I got got involved then these guys would
really want to bang me then. Cause uh.

FG: (IA)

DK: Well uh that's what I say, wait for awhile. I
didn't want to go to him because I felt that at
least stay with some little schnook for a while
they, if I'm with a schnook and it doesn't, nobody's
gonna hurt me but if I go higher to (IA) they say
Holy Christ this guy's connected with some Mafia
or something then they'll bang me.

FG: They'll what

NY 172-90

FG: They'll do just as much.
They'll do anything to you that they can no
matter who you got. Everything that they can
and then trying to get everything they can
against you or try to make a deal with you

DK: FORREST, I can tell you this that I'm gonna get
the best guy. I'm gonna make my, figures out my own
alley out of here out of this thing. I can't afford
to be ~~that~~ I'll get the best man but I wasn't sure
which direction I was going till I talked to you
these few points I wanna make sure that your sure
of CONNIE

FG: I'm positive

DK: FORREST I want to make sure that you're sure those
tickets. Are you sure there's no drivers.

FG: No tickets went to any drivers.

DK: They got cash on....no throwback to you and to me
or anybody like you or me. I don't care about
anybody else. Fuck them guys. Up theres, any-
body like that. Well that's all then I'll go
then just protect myself.

FG: That's it, protect yourself 'cause this guy I
don't think that you got knows what the hell.

DK: Oh no, I

FG: He's a ~~carpet~~ ^{CORPORATE} (phonetic) lawyer not even like a
criminal lawyer. I I hear his partner is a
criminal lawyer.

NY 172-90

DK: I don't, I bet uh, I just don't, I didn't know who he was uh when I hired him right after that day in the hall I didn't know who the hell he was.

FG: Well this guy that just got out of law school who comes to the races every night I know him and I asked him who would be a good criminal lawyer who knew anything about the race track and he told me the Arnew (phonetic) had handled two, three cases for guys on twin doubles and something or other knew his way around. So I went to him and hired him but after the first time we met with him he arranged to put this greens ~~man~~ on the case. But this greens ~~man~~ to me don't know any more about the race track and betting and tickets and everything than a goose knows about God. So I mean uh and he was just told CONNIE uh I mean on the side no matter what you have to do to GERRY look out for yourself. I mean even if you have to lie. Tell them that he said this or that go ahead and do it. I mean I didn't like that. So that's why I told her I said uh he made a deal with her you know and ^{if} discuss everything she knew with the FBI and she knew enought they was gonna give her immunity. I said whoa, don't go he knows everything know and he's already told that to the FBI and it ain't enough for them to give you immunity. They just want this out of your mouth and they want you to say things that isn't true for them to give you immunity forget it. They had told him before you ~~gotta work out~~ what they want. *HE WENT DOWN*

DK: I was a little worried about him.

FG: Huh.

NY 172-90

DK: I was a little worried about him.....lawyer.

FG:about the lawyer you mean.

DK: Yeah, I don't think too much of him neither, but uh I don't know nobody in New York, everybody seems to be getting a lawyer so I decided I better get one too.

FG:you would have been lucky if you had gotten one ten minutes before you did. Then you wouldn't have answered one question. Didn't he tell you when you went in there to take the fifth. Oh you didn't have a lawyer when you first went in you called

DK: He told me to ask for tranacta✓or I don't, don't know the words (Both speak, IA) I forgot I'm not, I'm not up on that. Oh I know what at least thought I'd answer a couple of questions just prior to asking for a lawyer. I forgot what he said that when I asked....those two questions I answered.

FG: Oh huh.

DK: Exacta and...laws. Nobody's aware of it and didn't hit any papers or nothing. It's quiet so...*hope it stays that way*
what this. ST-

FG: How did Bear know about it.

DK: I don't know except there's only one way I think he might know see when I talked to that CARMINE, KANTS (phonetic) was there working on the truck at the shop these two guys are looking at me on a cot. Now the day before, two days before they had come by with a.....I had seen on the truck.....and CARMINE he must have come by again after I was gone and stopped and asked the mechanic where's DAVE. The

NY 172-90

- DK: guy must of told him. Just left in handcuffs. That's....what must of happened because I never got out of my car right in front of the place. They were standing there waiting for me.
- FG: Well I can tell you one thing. Whatever you done with Bear to business. Whatever you talked with Bear about. Whatever you done. You can't use it to the best advantage if you think they know about it. 'cause anything that he would know that possibly he could tell them about you he has told them. Not that he could tell them anything could hurt you other than he knew you kid.
- DK: All I can say to them is like Bear was the one who came to me with the story of starting this whole thing of buying tickets. His name was into begin with. I don't know if you want to go with that but he has to call OTLEY (phonetic) wrong before you say anything.
- FG: That's right.
- DK: PAUL is the guy who said to me one day, I know what's happening in New York and I want to hold some money and I'll show you how it's done. I couldn't believe it. So how do go from that now I don't know what he said. If you say he's got immunity, the only thing I could do is sit back and get a lawyer that will listen to what I have to tell him and then see whats.....that they know.....what you say.....me, me being involved with him and then involved with you.....was like you say if he's told them anything with that immunity thing or not, I don't know. Could mean nothing. *

I ant see you sure freehold

NY 172-90

- FG: Yeah it could mean nothing but I just wanted you to, to be sure he wants to, you see that you know what he has told him. I don't know what he's told them. But to me, the way that my lawyers told me he says feel as though whatever he did know he has told them. If he's gonna squeal on one thing he'll tell them everything else right so that what he had done as far as I know.
- DK: But didn't he, well then then.....I remember him telling me about a party he went to with you, MARYANN, and DELL and a whole bunch and a fellow from Blackhawk Downs or someplace the guy who was putting up some money for the race track.
- FG: Uh huh, one of DELL's ~~old~~....owner
- DK: Right. Now you know.
- FG: But there was never not one thing mentioned about one race or our horses.
- DK: OK. He heard nothing for you and DELL or any other driver.
- FG: DELL wouldn't mention....
- DK: No but I mean how about you, you did have enough confidence to save for an end.
- FG: No. No because if I should say something in front of him with a driver then the driver wouldn't say nothing to me after. In other words whatever I said for would would be trying anything more with

NY 172-90

FG: you would be in confidence with you. I wouldn't have four or five people.

DK: This is what suprised me. What the hell was you doing with Bear along with you.

FG: That night we went to a party, oh I'm sorry, I was with some broads. We we just had some broads and some other guy and something to eat. It was all sit up and that's what we had. Nothing was mentioned about horses or races or

DK:ROCKY (phonetic) you know he told me about it but but I took it from that I said to myself what the hell is this guy nuts. You know, you know.

FG: Now it was never never mentioned about one horse. DELL wouldn't mention anything about a horse in front at his mother.

DK: I know.

FG: So I mean I'm not in the least bit worried about that.

DK: Well you went with him up to, with the chickens to CARMINE's. You never said nothing to INSKO at CARMINE's.

FG: CARMINE, CARMINE was never there, never saw him, CARMINE.

DK: Because see, he she you say he's talked you gotta start thinking of every little thing he done.

NY 172-90

- FG: I know it but there's never no place never, never that he's ever done anything that I wouldn't want anybody to know about. The only thing that he's ever done was is buy tickets and get tickets cashed and knew what I was buying and what I wasn't buying and what I did cash now how much he can hurt me with that I don't know, but that's the only thing he can hurt me with.
- DK: But you went to main in the car with him you didn't talk you didn't say nothing, nothing about me, you know ah you just went....chickens.
- FG: That's all I mean, chickens.
- DK: Yeah think because you know this buy could, could harpoon you if he, if you.....
- FG: I thought it over because I've know this, that's the way he wanted to go since implications started. And there's nothing that ah, I just think of how lucky I was to not put any trust in him, to be in the wrong place at the wrong time. But there's no pla., there was no time that any two drivers was ever talked to me at once or anything. So you've got nothing to worry about. I mean if and how, how, how ever this happened was is from the old days where I went all through this with the super with the twin double. And we used to like have meetings at different motels wherever we were staying and and they would come right out and put it; when we went to the Grand Jury they put it to us. There was you, there was this guy there was this guy you was all together. You know what I mean?

NY 172-90

DK: Yeah, so?

FG: So but this, this time but as it was happening I said to each one of 'em look I don't want you talking to, A talking to B I don't want B talking to C, I'll talk to A, I'll talk to B, I'll talk to C and I make the decision. So there's no way A talked to B there was no way that I was with A and B at the same time. There was no way that B and C was together or, you understand what I'm saying.

DK: Yeah.

FG: So that there's nothing.

DK: You learned your lesson once.

FG: That's right. I went through that.

DK:what bothered me when this guy said something about single tickets, this shit.

FG: They'll probably, they might be ah, some of them single tickets probably ah....two or three of them I cashed myself and under my name.

DK: Oh then you're all right, then you're all right.

FG: Yeah.

DK: ..In your name.

FG: Oh yeah, but any of the other single that I cashed they was given and I got the cash and that was it. So I don't know wherever, who cashed them or where they was cashed or....so don't you worry a bit....

NY 172-90

DK: I can remember one night when you said you were gonna give PUCCI (phonetic) the ticket himself. ROGER (phonetic).....gave him the fucking ticket and let him worry about it.

FG: Uh huh, but I never did.

DK: You didn't give him the ticket?

FG: No, no not a one of them, never got a ticket.

DK: That's all FORREST because I said if you gave it to ROGER PUCCI I wonder what he did with the rest of 'em. If these guys are cash who were cashing them and they get a hold of some rats that come back to them, they're gonna come back to us.

FG: Not....none whatsoever, not a one of 'em.

DK: Was it ROGER or.....

FG: No.

DK: Well....anyway was ROGER right, somebody was bugging us for some money that we, either we, racing bring back a hell of a lot or some freaking thing remember it?.....don't bother we don't have it. You know, I do.

FG: I don't remember it, but there was nobody.

LK: Right, I know you didn't, you I know you once told me you that one night you're gonna..... the small one, he said I don't give a fuck he says let him go worry about the, cashing 'em himself.

NY 172-90

FG: I don't remember it, but there was nobody there.... ticket.

DK: I don't know it was PUCCI....coming back it was either PUCCI, I can't remember exactly who. You said something like that here, I didn't pay attention 'cause I didn't give a shit I was pissed off 'cause the guy who got them, I didn't think she'd got 'em but fuck 'em. But then when he started talking about singles, holy Christ they're gonna take you serious now. Take the one that I cashed. They're gonna put them together. Then take the.....there's the problem.

FG: There won't be, you can ~~DEFEAT~~^{DEFEND} on that. A hundred percent. The only one they could come up with that cashed any of 'em at all or any connection with....

DK: Oh....you cashed those yourself.

FG: Uh huh.

DK: You got nothing to sweat, you're the, you're the guy who declares himself....

FG: *THATS ALL*

DK: What about um, what's the name of that lawyer?

FG: That I got?

DK: Yeah

FG: BOBICK.

NY 172-90

DK:who the hell he knows around this, this area.

FG: What for another lawyer you mean?

DK: Yeah....him to let me know.

FG: All right, I'll talk with him tomorrow.

DK: I'm not gonna be here tomorrow I got to go to a christening so, be gone by the time we get back.

FG: Well I'll talk with him tomorrow night and talk with you Tuesday.

DK: Yeah, I mean you know.

FG: I'll tell you why, this GREENSPAN ain't my kind of lawyer, your kind of lawyer ah he's too much *ETHICS* well he couldn't even advise you or he couldn't say instead of putting shit before this it would be better bet, for you to set up the other way I mean he's so worried about I'm worried about my practice I don't want them to come back and say that I ever advised you to do this or anything I mean he's all....where it is I like a lawyer who'll sit down to me and I tell him exactly what happened and he'd say now wait a minute. If you had give this ticket to the guy instead of to this guy and there's the same thing there's together you'd be that better off. He's not telling you to say you gave that ticket to that guy but he's giving you a, a route to know which way is the best way for you to go or what you should be saying do you understand what I'm, and that's the kind of lawyer like this BOBICK is I mean he'll tell you exact

NY 172-90

FG: what the law is and what you how it should have been done and ah you can't say that you've done this or you'll be guilty this other little prick I mean if you say it one way to him, oh well that's the way we'll have to tell it to the Dist, District Attorney, I don't want you to change it one bit because that's how you told it to me. I mean who the hell is he looking out for? That's the way I feel. He ah, a lawyer that's worried so much about his practice and his license that he don't want to advise you to what is your right to what's the best for you to do, I don't like that.

DK: Well I didn't speak much to him you know I didn't you know chance to do anything with him except, boom, ten minutes in the hall, I got to go I sent him his check. Then I, was supposed to go meet with him up in White Plains, who the hell's gonna go way up there, I'm busy as a rat, my kid got sick so I called him and said look do whatever you have to do just get me excused for the next I don't know when. My boy is getting a hundred and five fever for ten days and I don't know whether he's gonna make it. I am shit scared. So I worked in that plant four in the morning till heh, ten at night covering the job till the boy got sick. Now that he's back, he's back and now things got better....I called the lawyer and I say well now you can get me squared away and find out what's going on I didn't know anything what's going on, when you called me and you said what's happening, and I said I don't even know. What was that was a week later exactly. *ZAP*

FG: I was in Puerto Rico.

NY 172-90

DK: Make any money with the chickens?

FG: I win the championship of United States and Puerto Rico win six straight period.

DK: How much money you talking about when you say money?

FG: Well we had about twelve thousand dollars was for the ~~plus~~ plus seven.

DK: Wow, that's pretty good.

FG: I win forty all together.

DK: Whew. You don't wanna eat them chickens.

FG: No that's what I'm saying they're good chickens.

DK: Can't eat them. Beautiful. I win that race up there with... *MAE I GAVE THIS DENNIS*

FG: Oh did she win while I was.

DK: She win.

FG: Yeah, how fast.

DK: Thirteen

FG: I knew she was second the first out wasn't she.

DK: Yeah.

FG: Yeah.

A104

NY 172-90

DK: Then the other big guy was in 8th classic the same night and he was second.

FG: Oh yeah.

DK: And, and ah and in two eight.

FG: Second two eight.

DK: Yeah.

FG: That's good.

DK: Second time out.

FG: Yeah.

DK: And ah, so I think that these two...will come along.

FG: Hope so.

DK: I wanna get the big one started, the big one.

FG: Yes.

DK: The big ones cost a lot of money.

FG: Well he, he'll give whatever he can....., he gives a horse the best of care, the best of care.

DK: He's a good kid.

FG: The best of care.

DK: He's, he's pretty smart.

(IA)

NY 172-90

DK: You get those papers from TURCOTTE? Who had them?
TURCOTTE had them. How the hell did he get those
papers?

FG: I had give him the registration papers that was
signed just put in your name

DK: Yeah

FG: The race secretary he took 'em into the office
with the eligibility papers and he gave 'em to
her.

DK: Right.

FG: She sent 'em in and had 'em changed and then
when he left Roosevelt.

DK: They came back to Roosevelt?

FG: They came back, they sent 'em back to the track
because that's who had changed 'em. And when
he left Roosevelt to go to Saratoga.....*Back to Saratoga* gave 'em
to him. So he had 'em with the eligibility papers.

DK: Oh. I never heard of that.

FG: Well generally in most offices they want to keep
the registration papers with the horses who are
racing claimers anyway, it's a law.....

DK: Claimers yeah, yeah.

FG: Oh yeah. So.....I mean these horses are racing
claimers.

NY 172-90

DK: Both are in claimers.

FG: Oh! That horse "Miltie Hanover" horse won two while I was in Puerto Rico.

DK: I know, I know one he won.

FG: He's won two. He paid 15 and then paid 11 or 12. Win 2, 4.

DK: What, what size claim was he in?

FG: I mean that was for \$7,500. Now he's put him up to 10, to 10. *you lose big*

DK: 24 he's gonna lose 7,500.....is he claimed or I thought you were going to keep him in condition races

FG: I was going to but, uh, good race today.

DK: Tonight.

FG: It's going this afternoon.

DK: It's an afternoon race....said she'd be fourth or fifth

FG: You should have seen this horse....she made a couple of breaks and then....but her heart was in it or not he said he's been working on it now she ain't making breaks no more so he said we're going to....'cause she tore all the other muscles.

DK: Oh, I know.....

NY 172-90

FG: So I got them papers and all you have to do is just have them sign and just change them over to him

DK: What does he want in his name? What's his first name? I don't what the hell

FG: ELDEN

DK: ELDEN like ELDEN HARNESS---I'll just put "E". I'll get TERRY to sign this for me

FG: You have to do nothing. All you have to do is to have him sign it. Then let ELDEN sign

DK: Were you eating?

SON: No, no.....

(Male, female and child's voice distinguishable but IA)

SON: Want me to take his bottle: /

DK: Come on TERRY, sign this. Whew, I didn't know it was this hot in here. TERRY, you sign here. Show him where....should know where.

SON: Yes, sir

DK: First ~~see~~. Wait a minute, wrong ~~see~~. You don't know what.

NY 172-90

SON: I do know.

DK: No you don't.

SON: Alright, you bet with me.

AK: Alright this is, first this is the wrong seal. This is Krafthill Farm. Alright now this is Krafthill Farms but.

FG: The USTA fills this and all you have to do is, he signs here and.

DK: OK, you're right. They rip it off. OK?

FG: Then you send this whole thing in and they rip it off. You have to sign this, uh, what is it, Krafthill Farm and then....

DK: I just borrowed your.

SON: Yeah, alright.

FG: I think I've signed one or two or these.

DK: I guess you have.

(Male and female voices, distinguishable, but IA)

DK: But now.
You gonna be....Tuesday or you gonna get in touch with me Tuesday after four.

A109

NY 172-90

FG: Yeah.

(Male voices distinguishable but IA)

DK: You get in touch with me Tuesday? OK I'll keep it down, don't worry about it.

FG: Huh?

DK: That'll keep you weight down.

FG: Good.

DK: Huh?

FG: I feel good.

DK: You know I watch it. Gotta watch it.

FG: I've lost 16 pounds and I've got ten or fifteen more to lose.

DK: Yeah.....

FG: I've lost.....it shows. Well I lost 16 pounds.

DK: FORREST good luck. Talk to your lawyer. See what the hell is happening. Get back to me Tuesday. Maybe we'll get together. Maybe we'll need another meet to straighten this shit out. What I want to do is try and find out what Bear's got behind. and I'm gonna question him a little bit if he's.... *has m...id*
I don't think, I think he'll lie to me myself keep his ass in the ringer.

FG:you want to be careful.....because he could be taping something.

NY 172-90

DK: Yeah, I wouldn't consider. All I ain't worried about that fuck because I ain't gonna tell him nothing.

FG: No, No, yeah, but I'm just saying you uh just I mean just, just be careful how you do talk to him. I mean that's how I feel. I felt as though each time I talked to him I wouldn't say uh what gave goes on anyway. I've asked him questions but I wouldn't say anything that would implicate anybody. But you don't know when you was working for them when they'd say to him well go get process over with him and get this down on tape for us we need it. You know.

DK: Right. That would be sensible.

FG: Huh?

DK:

(Male and female voices distinguishable but IA)

FG: OK. So. Well then you want me to call you....

DK: Call me again tomorrow.

(Male and Female voices distinguishable but IA)

THE AUGUST 19, 1973 CONVERSATION

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/29/73

The following is a verbatim transcription of a conversation between ELDON TURCOTTE (ET), FORREST GERRY, JR. (FG) and DAVID KRAFT (DK) in the office of DK in Farringdale, New Jersey.

FG David Kraft this is Eldon Turcotte.

ET How are you?

DK How are you, you're Eldon.

ET Yeah.

FG Yeah. I wanted you to meet him just so you could straighten it out in case they should have....

DK - OK

FG Because if he, they ask him he'd have to say ah, I don't know him or I haven't met him or something, that's why I wanted to, want to make sure to ask him I just wanted to, so you guys would both have the same story.

ET I thought that, ah, as far as, ah, the purchase of the horses...how I come to get them. Whether you, if you want to say that you come to the track and seen me or if you want to you could say that you called me up asked me about a....horse and you sent him to me I took...percentage. It was fifty five, ah.

FG Fifty five, forty five.

ET Fifty five, forty five.

FG But whatever, that's why I say whatever he wants to say to you, how happened that he take the horses trained did you contact him did your son talk to him or who talked to him.

DK Well I'm listening now.

Interviewed on 8/19/73 at Farringdale, New York File # NY 172-90

SA SAMUEL M. WICKNER:mej

Date dictated 8/24/73

A112

FG Yeah, well we don't know that's what he wants....

DK I'm waiting to hear what you're gonna say cause I got something to tell you.

ET Yeah.

FG Yeah, but he don't know that's what....

DKhear what you're gonna say.

ET Well we could say that, ah.

FG Never mind whether you could say you never said anything he's probably said something already.

ET I haven't seen....

DK Oh, I didn't say nothing I've heard something that's why I'm gonna say to you.

FG Yeah.

DK I've heard some things that I want, I'm not, I'm concerned about how we're gonna say this. I'm concerned of how we're gonna put this into the books and how we're gonna take it out, so I'm listening to you, youse tell me how you're gonna do this.

ET All right, well the way it was done with him, he told me and he told me because.....

EG He knows that.

ET ...he told me you told me...you gotta take two horses and if I was interested in taking two horses on percentage, and I said yeah and you told me what kind of horses they were and, ah, I took the horses on a fifty five-fourty five basis. I was getting fifty five, paying all the bills, you were getting fourty five. Ah, then the horses were, ah. You were gonna sell the horses before Miltie Hanover was claimed.

NY 172-90

DK Is he claimed?

ET Yeah he was claimed.

DK Oh.

FG I know that's what we want to get straightened out.

ET ...he was claimed and, ah, but.

FG When I came down.

ET The time before that he didn't think it was, they were, at first⁸ they weren't taking enough, that you just weren't satisfied. I don't know what the reason would be, you told me you were thinking of selling the horse and I had a friend of mine who was interested in buying the horses. I asked you what the price would be on 'em, you wanted fifteen thousand for two horses. Now the one horse was claimed for ten thousand, "Miltie Hanover. That left the rare, which I acted as agent for this guy Andy, who I got five thousand for the rare Ah, I sold the horses and I had the papers I rade them out the day before the horse was claimed. But I had dated it the following day so the girl just crossed off that on the registration and, ah, Militie Hanover went to the people who claimed him, the rare, the guy gave me five thousand and, ah, I gave it to you. Now, but what'd I give it, did I give it to you in cash, did I give it to you here? Or did you meet me? That's just the, just the details of where, when and how.

DK Right. Well, the reason I, I I say that I have to know because see my books have nothing in 'em I've got to know what I'm going to put in 'em.

FG That's why.

ET Right, right.

FG For you to discuss it with him it's better than me discussing it with you and then going back to him and everything gets straight this way.

NY 172-90

ETwell we know how much the horses made.

DK Right.

ET And, ah, as far as taxes on them goes that's up to you guys.

DK There's no problem there.

EThow I got the horses.

DK The problem with me is how did I purchase the horses and how did I sell the horses..got into the farm.... purchase the horses.

ET&FG (Inaudible).

DK Eldon, Eldon, for me to have a legitirate, I see my the, the books have got to show an, ah, legitimate purchase in and a legitirate purchase sale out. Right now they show nothing as far as sale in or sale out, so I, it it is up to you to tell me what you, I was listening to you carefully 'cause I want to try to sensibly make this make some sense.

ETnow you gonna say that you bought the horses through you right?

FG Yeah, I acted as agent I told them where the horses was for sale and, ah, they bought the horses for twenty one thousand.

DK The horses were bought for twenty one thousand.

FG Right. They was paid for in cash.

ET He bought through Forrest as they, he was acting as agent. You have a horse for sale and they, you interested in them and you bought them.

DK Who'd you buy them off Forrest?

FG Ah.

DK Pardon

FY 172-90

ET Pox (Phonetic).

FG No, no, Pox (ph).....this guy was a trainer not the owner, you got the owners on there.

DK I've never even looked at ther.

FG Ah.

DK I never saw the papers.

ET I was, yeah well....

DK You have the papers.

FG Ray Ireland.

DK They were bought from a Ray Ireland?

FG Yeah.

DK Both of ther?

FG Yep.

DK Oh.

FG Because he trained both of these horses for this, for the owner, that owned these. Ray Ireland from Presk Isle, Maine.

DK Ray Ireland from Presk Isle, Maine.

DK I'll gave to look up what date indicated when the purchase was made. So, sensible.

FG Yeah, mark it down.

FG-DK-ET (Inaudible)

FG Like, by you talking with him you can get everything all straightened out, where you couldn't by re just answering messages back across, and ah, for sure we didn't want to get him in trouble, you in trouble, or your sons in trouble. This way here you got the sare story there's nothing to it. But if they should call him in and he says he didn't know

(Inaudible)

ET If they would have called me up before and say, they haven't called me in or anything, but if they ever did, ah, they stood five people up there.....I wouldn't know if I met you before.

DK No, I wouldn't know you, when you walked in that door, I never met you.....

FG That's right.

ET And, ah, another thing about it is he couldn't even be there.....
(Inaudible)

FG I mean I'm not saying that you done the things with him or your son done....I mean.
(Inaudible)

FG All right, yeah, but I mean where that they was in you son's name.

ET Now did you want to, do you want to say that you ah, you met me one day at the barns and you asked me, ah, do you like the way I operate or something like my operation was run and you asked me if I wanted to take two horses and you just said....or you want to say that you called me up and asked me if I was interested in taking the horses on a leasing deal.

DK (Inaudible). *well that will be better*

ET Calling up or you came down.

FGYeah no well.....cause he can say at that same time.

DK&ET (Inaudible)

ET Was Freehold going on at that time.

FG Yeah, Freehold was going on...at that time you met him at the track at Freehold.

NY 172-90

ET Um-hum, well.....

FG Yeah, but I'm just saying what, that's.....but I'm pretty sure at that time the races was going on at Freehold, but I'm not positive.....you could have met him down at Freehold anyway or wherever you wanna say.

ET I originally met you at Freehold, all right, remember I now I remember you live here.

FG I think.

ET I originally met you at Freehold, last year.

FG You, you could have met me a year or two ago.

ET That's right.

DK You could trace horses easily.

ET Yeah.

FG (Inaudible)

ET And then you called re. you called us about, ah, said you bought these horses and you wanted to know if I would, ah, you had a couple of horses what I charged and the price.....you just wanted to know, you didn't even know these horses, but you, it was a chance you were taking and you wanted to know if I would take them on a fifty five.

DK Lease.....

ET Forty five arrangement, not on lease because we didn't.

DK Oh.

ET Sign any leases?

FG No.

ET A, a an understanding.

DK Purchase, ah, ah.

ET Arrangement.

FG Arrangement.

ET Arrangement.

DK Yeah.

ET Yeah, I paid all bills, ah, you couldn't see where it was all that profitable, ah, as of a week ago you thought you'd get out because you know, you're not going in that much to see em, you only seen'em race a couple of times and being racing for the percentage I, I was doing all the time.....because I was getting fifty five percent and all the bills being paid and I had you know.....Now ah one, last Monday and the horse was claimed that you have, ah, sold the horses, you've took a little bit of a loss not much you wanted fifteen thousand two horses if I wanted to buy them myself. I didn't have the money or I didn't really want them, but I had a gentleman that did want them. Now this guy doesn't know nothing from nothing. Ah, you ain't got to know the man. I acted as agent for you, I said OK I'll do that. Now I filled out the paper, but the night after though I made the, say made the sale like the following day. So I explained then that the horse was coming that night. So I explained to.....the horse is still racing under the man's name and in the office.....And I said what happened was the horses were gonna be, the money exchanged and the horses were gonna be transferred over to the other man's name the following day, but it just so happened the horse was claimed. Well no problem, she took a pen and she just crossed off the man's name who I put the horse into and she...the new people that claimed the horse. Everything else the same. Now the other horse I've already got.

FGthe horse was claimed.

ET Yes. The other horse I've already got into this other ran's name as of now. But I.....you didn't think five was right for the ran, but, ah, the fact that you promised him two horses for fifteen you let him have it for five and, ah, it's already, ah, transferred and everything the guy's been licensed and everything, ah, he's worked, ah, construction, ah...tractor trailer for the last twelve fifteen years.....he's 100 percent OK never had horses before doesn't know the first thing about a horse. But a personal good friend of mine.

FG As far as I go you don't know the guy.

DK You don't know the guy.

(Inaudible)

ET All you know is I give you __thousand dollars, ah, cash money.

DK Yeah.

ET Five thousand of it cash that he gave me, and, ah, so the transaction was race where? Here, Roosevelt, as long as I know this is all the questions I have and I don't have anything else. That's it, but where did I give you the money and how did I get the horse. You called me up, I seen you here last year, I've known you about a year now. All right tell me....

FG Dave called him up.

DK Well you got the check and they claimed.

ET I raced a couple of horses here last year, ah, two horses three horses that we didn't decide to race... You met me then and you, I says, ah, called me up. I said yeah, I will take them with they do. I just bought the....Ah, was I aware of who you bought them through? Was I aware of who he bought the horses....

FGI don't care, it don't make no difference to me.

DK It's up to you.

FG Yeah.

ET Well as far as I know.

DK You want him to know that, you want us to say that.

FG I, I think.

DK You were involved in this in this deal?

FG I'll....you, you have got to say I was involved as agent for buying them from you, because if they ever should call Ray, ^{Ireland} and you know how'd he get paid or anything else.

DK He's gonna show you.

FG That's what I'm saying I acted as agent.

DK OK.

FG For you, but he doesn't have to know.

ET No, but.

FG He doesn't have to know how you bought the horses or everything.

DK He told us.

ET I think you mentioned it to me. I'm not gonna deny it.

FG No, no.

ET I know you.

FG Yeah.

ET Ah, as a matter of fact the things you, ah, you did happen to mention something, but I didn't think that I know you got a lot of horses here. I don't not really sure I think he said, ah, Forrest, had, had something to do with it. But I heard somebody say it in the paddocks that's all. But I'm not all I know is I don't have any of the horses...the man called me.

NY 172-90

FG I mean I buy horses for, ah, Insko.

ET Yeah.

FG And for Gilvour and.....

ET All I know is a man called me and asked me ah,
.....and he
wanted to know if I would be interested in taking
a horse on a on a percentage. I, first of all
he asked me how much I charged.....too much for
those prices I don't, and he asked me if I'd take
'em, and I said sure I'll take 'em as long as they'll
do. I'll try 'em out and if they can't do well I,
you can't expect me to.....as long as I'm
racing 'em it's under a percentage.

DK Right.

ET Fifty-five, forty-five.....
you wanted to know if I wanted him he didn't
even know the horse he bought then and he, ah,
by himself.....horse, he got a lot of horses on
this farm and that's it. And I came with the five
thousand and I gave you the money where? At the
track, ah, so we'll get our story straight. Here,
the track or what? I wouldn't know how to get...

DK They're racing back at Freehold again right?

FG Um-hmm.

ET Are they in Freehold now?

DK Yeah.

FG Yeah

DKmet me at Freehold, I raced a horse.

FGFreehold.

DK Tuesday him and me went into the race.

ET I raced a horse Saturday um.....
.....

FG Well for one thing, one thing is he's got the
check for ten thousand that he's got to give to
you, you have Terry just cash it and sign it
and give it to him he could have cashed it.

DK Can't cash....check he's gotta deposit it.

FG What, he can deposit it or he could get it
cashed, as long as Terry signed it he could
right in to Mutuals (Ph) and they'd cash it for
him. But it don't make no difference if you'd
rather take the check and put it through the
bank.

DK Well wouldn't you think that would make sense.

FG Well.

ET Well, let's get one thing straight in the first
place where did I give you the money? Just in
case, ah, I want everything else seems to be
covered.

DK What money?

ET The the money for the mare.

DK This money?

ET No the money for the rare.

FGFive thousand.

DK Oh the five thousand.

FG ...the same time as the check.

DK Oh, why don't you say here then you came here with
the check.

ET I can say I came here this morning.

? The check is gone.

NY 172-90

DK Yeah, don't you, don't have to pay re right away.

ET No, but I brought that five thousand to you that the guy give me, I gave it to you this morning.

DK It's up to you.

ET All right.....
or I, I.....I met you, ah, just in case to be sure I don't want to put too many things in here with, I didn't, I didn't know how to get here if they ask the second time, I met you, ah..... at the track. I didn't know.....I met you at the track and we came over to your place her, but I don't really remember how the I came here with somebody else, don't remember who it was. The first time.

(Inaudible)

ET No, but I'd rather have everything....you know what I mean.

FG So

ET Because it's, ah, nobody else knew anything about these horses, and ah, it's very, the fact that one horse was claimed the person who I keep as agent and he bought them and I acted as agent with the other guy. I gave him five thousandcheck. I don't know what to do.

DK I don't know about the check he, ah, ah, if you want the check.

FG No, no, we don't have to....check. whatever is the best. You can take it and give it to Terry you can put it, cash it and put it through abank or you can take and have Terry cash it and he can just take it into Mutuals Bank give him the cash for it, but either way you want to do it, or.

DK Well I con't know where, where you come from, but corporate checks can't be cashed, I don't know you can't a corporate check at the, at the "Mutuals either.

ET I don't know that much about.

FG Well you get a, get a Roosevelt check after a Roosevelt meet that's a Roosevelt check.

ET It's made out to, ah.

DK Corporations.

ET It's made out to Kraft Hill Farms, Incorporated.

ET It's got Incorporated?

FG Yeah, but they would still, they would.....

DK I don't care.

ET But it don't make no difference.

DK I'd rather.

ET If, if if there's a way of getting it through, through an account or something like that, I think it might be easier.

DK Account.

ET Pardon me.

DK I ain't got no alarm. I only made one mistake and I'm telling you do what you want.

FG No, No.

DK You got to.....

(Inaudible)

DK You do what you want.

FG No, no.

NY 172-90

ET I have no, I have no say in it.

DK You take it back there and do what you want.

FG No no, No no, No no.

ET I have no say in it.

FG No, no.

ET You see.

EG No, no.

ET This is, this is the exact, I get my five thousand the money I.

FG Well wait, it doesn't make no difference, he could take if Terry signed it he could take and get it cashed in the Mutuals. But if you ever have him take it and put it through his bank, then he just hands you the check that's good enough for me. You can put it through.....get it cashed right away.

DK Well I feel that.....

FG Huh?

DK You can get a problem.

FG No.

DK You cashed

FG I've cashed hundreds of checks.

ET What if I cashed it.

DK Anybody.

FG No. Not at the track if it were somebody else if it is a corporate check at any other place they won't cash it, but Roosevelt will cash a corporate check, as long it is their own check.

(Inaudible)

FGhave you got the check.
(Inaudible)

FG Yeah.
(Inaudible)

FG Just give it to you and you take and have, ah,
have Terry sign it and put it through.

DK You wanna talk in front of him.

FG No, no 'cause what he don't know is.

DK Well I got some things I want to discuss with
him where, I was in to see these people.

FG Yeah, I know that's what I don't want to tell him.

DK Where you going.

FG And I don't want to discuss.

DK Oh, all right where you going with him afterwards.

FG Back to New York.
(Inaudible)

DK All right why don't you do this, why don't you
get out of here.

FG No, no, as far as that goes let me tell after after
we're through talking I'll just have him go out in
the car and sit for a while and we'll discuss it
or whatever you want to.

DK Oh, all right.....

FG But I mean I'll just tell him we're gonna discuss
something it's better he don't know about that's
all.....

DK I would rather.

NY 172-90

FG Oh yeah, I don't wanna discuss nothing in front of him, ah, there should never be anybody else in fact I've heard a couple things I want to discuss.

DK Well I, I got I.....

FG Yeah.

DKthat's why I had the lawyer there.

(Pause)

DK It's up to you, if you want to.

FG No, No

DK (Inaudible)

FG No, no that's all right, no, no, its good. I think it's better that you take it and have Terry sign it, and put it through his account.

DK (Inaudible)

FG Yeah.

DKlikes to be passing a ten thousand check.

FG Yeah.

DK You know Terry.

FG Yeah. It's all right.

DK Ah.

FG It's all right.

DK It's up to you guys.

FG It's OK. No, no it's good. What I'm doing's the best. I mean we're just trying to, what I, what I want you.

NY 172-90

DKany statement whatsoever 'cause now.

FG What I want you to get straight in case they ask you questions about the horse, you can say who you talked to and who you done business with, which you didn't know any before, you didn't know.

ET There's no way they can prove anything.

FG You wouldn't say you done business for your son. In other words what business you have done

DK Oh yea, I just don't want to say, all I am going to say is whatever I did I did, he did it at my asking.

FG Yea.

ET And he had ... no offense knowing him or he knowing me and the other two horses he had sent to me like he bought them and, and you can even say it was under his recommendation that you sent them to me or somebody else's

FG Inaudible.....that

ET Yea and I happened to be in Freehold and I seen you and you called me up and wanted to know what I charged, well the price is a little high, uh, so you said well, you asked if I would take them on a percentage basis and I said OK as long as they will do, if I can see they're gonna do...inaudible, and we agreed on 55-45 and you, I raced him all this time for you. The horse went to Saratoga, the mare was good....one way or another you didn't think it was that profitable and you wanted to sell him. If I find somebody to buy them for 15 but one was claimed in the meantime. Sold him for five got the check for one I gave you five thousand, got the other horse I kept.....I don't think there's anything else

NY 172-90

DK No, wait, Elden let me get this straight now.
Inaudible...Elden, you sold the horse for \$10,000
and ah, got rid of one, one claimed in a claimer
and you sold 5,000 ("Adios Misty") lets get names
down here. You sold "Adios Misty" outright sale,
right. Does the same owner own both these mares?

FG No'cause one claimed

ET One was claimed by Lou Matinas, he claimed the horse

DK But this other guy you sold

ET Yeah, now you had offered the horses to me for \$15,000,
you had offered both horses for \$15,000. You aksed me
what I could get. I said well the one horse's race was
a \$10,000 claimer, the other mare's in a 75, she makes
or breaks and she knocks down.

DK Elden, what's the date of the 10,000

ET Last Tuesday

DK Tuesday, Tuesday

FG It's right on that (inaudible)

DK Tuesday, August the 13th that would be. I want to
make notes and and entries in the books so you know,
the 14th

FG Yeah, but they might have not made that off the claim
papers

DK No, it was claimed on the 14th

FG It was claimed the 14th

ET ...It was claimed on, on August the 14th

NY 172-90

ET Then the date of the sale on the mare was the 15th, the following day (Pause) Then I give you the money the following Sunday

Inaudible (Pause)

FG All of the earnings of the checks should come to you and there's a check for that horse so everything goes through the account of whose

ET There's no way in the world anybody would question, as to what I've done

FG That's what I'm saying.

ET Unless I hadn't met the man and they want something. I don't know if they know my business but nobody knew mine except you, and nobody knew yours except this man so there's no problem for anybody to, ah

FG No, this here solves it all, I mean this, ah

Inaudible

ET Cause I was worried if they should try to bother you... we heard a rumor...then they could say, ah, bring five people in, ah, was it you who owned these horses, Mr. Kraft, and how did you get them. Well, ah, the man came in the barn, 'cause I couldn't say I met him. They can stand up five people, and say that's one fellow they're all FBI men or something and then how would I know and, ah, how many times did people sell me horses over the phone that you never met or had the horses almost a year and never met the guy or taking them for a season anyway

ET So at least now I met you and know what happened. I I met you like last year at Freehold, you called me up. Wanted to know.....

NY 172-90

ET I didn't care, I needed the horses (mingled conversation)

FG I didn't have any...I purchased them as Agent

ET Well, something like that, I don't know. Because, uh, somebody told me this man, I don't remember... Mr. Kraft told me this on....

DK Elden, how do you spell your name? L-L

ET E-L-D-E-N

DK E-L-D-E-N?

ET Yeah

DK Thought it was O-N...E-N

ET T-U-R-C-O-T-T-E

DK Boy, what a memory....
Ok, first part (ph); OK, Elden Turcotte, be it so (ph), listen now, we bought him from a Ray Ireland in Prescott (ph)

ET Presque Isle

DK Presque Isle, Maine...Prescott, where did I?...

FG That's way up on the Canadian border, the horses was racing in Rockingham, nobody else would race them at that time

DK Alright, that's....that puts some sense her, you know

FG Yeah
That's what saying...

NY 172-90

That's what you gotta do...if they ask you or they ask him you both gotta know what you're gonna say

ET
FG

It's not all that complicated....
No, uh...

DK

(Unintelligible)

ET

It's not all that complicated at all, its very simple...as long as we all know...we just didn't take the time before to meet, and, and, uh, it was (unintelligible), didn't take my time to simplify. There's no problem with anything.... as a matter of fact, it wasn't just the exchange of the cash, there's no need to say that this wasn't really done this way....everything but puttin' the name on the paper

DK

No, now, how d'ya, how's this guy here in, uh

ET

That bought the horse?

DK

Ray, Ray Isle

FG

Ray Ireland, how is he?

FG

He's a nice guy. When I bought the horses I told him at that time I was purchasing them as agent for you. So that if he ever got a doubt (ph), he got it on his books that the horses was purchased for you.

DK

OK

FG

And I acted as agent.

NY172-90

DK What kind of fella is he?
 I mean if he gets any pressure on him, he

FG Na, he's a nice guy, real good.

DK Don't want him to get all shook up.

FG But, there's nothing, he can't, I just went and
 saw him and talked to him about the horses

ET Inaudible

FG Yeah, that's right but I

ET (inaudible) Yeah but you bought them then you
 bought them over to me

FG But I told him because they was going to be changed
 from to him the USTA, to him, so I told him to put
 it down in his book ~~the~~ exact price 21,000. And I
 said I want it put down so you both have it straight,
 it's 21,000 and its for Kraft Hill Farms.

ET Did he ever question why the horse. Well first of
 all where the horse has been racing. One horse is
 (inaudible)

FG Yeah, but both horses were racing for 75

ET Yeah, they were both in for 75 at one time but one
 mare went lame, he still wins races. They weren't
 racing good and put him in claims, get your money
 back and you lost him for that, a tax loss for two

FG Thats all right, that's no problem, they'll ~~settle~~ ^{sell}
 for anything they want to do, and that looks like
 a legitimate price

NY 172-90

ET The price are legitimate one was claimed, the other one....for \$7,500

DK As long as I get some.

FG So you got that all straight. Now I want to talk to him about a couple of other things. Its better that you don't be here to hear.

ET Oh. OK

(Inaudible)

FG Now you hear all kinds of stories, I heard that they had tried to make a deal and give you immunity. If you would take, make, a tape record when I was talking with you and try to say that there was something going on in races. They wanted me to, they had tried to arrange it with you. Like when I talking to you now you would have a tape recorder running and ask me questions that would say that there **was** something going on in the races or something like that **and** for that they would give you immunity and drop the phoney charge that they got against you, did they mention that?

DK No, no, no, they didn't give me that, they laid out a few things to me. I ask for immunity. I didn't get immunity ~~do~~ get ...because they don't think I don't have anything worthwhile to give em. Unless I could show 'em something so I figure I got time to wait. ...so they gave me

FG But there is nothing, you can beat that charge, there ain't nothing they can convict you on... Unless there's more to it than I know. As far as you just saying that you only cashed one ticket

NY 172-90

then you cashed more according to my lawyer that ain't nothing cause I can go in, in five minutes and say what the hell for himself he cashed one ticket then these other tickets, this guy was in the hospital laying flat on his back and it was that guy's ID the guy give him OK to use it to cash 'em for him so I mean that.

DK Who was Richie Perry? Richie Perry, your friend. Richie who lives over in Brooklyn; somebody by the name of Richie?

FG Randy Perry

DK No. No, that's a driver. No, not Perry, wait a minute

FG I don't know anyone by Richie Perry. I know Randy Perry

DK Richie, you didn't know?.....cashed a lot of tickets over there for you

FG Nobody ever cashed a lot of tickets for me

DK Somebody in Brooklyn cashed a lot of tickets. Someone told me he was connected with you.

FG Perry I know, but its Randy

DK Maybe we got the wrong name. Perry, Richie, I believe. Then they showed me pictures of you in the bank cashing. Remember that time you went over, how could they get a picture of you in the bank?

NY 172-90

- FG They got a picture, well I went to another bank. I cashed tickets myself at a bouple of banks, I mean I would go in and get a check and go into the bank and cash the check. There ain't nothing wrong with that. I put my name on 'em and it was legitimate that I cash them. But anytime it wasn't legitimate that I went to the bank, I never went up where they'd be taking pictures of me.
- DK Well, you know the day we went off to New York and you sat in the car where the kid was inside, they got your picture and him at the window. The camera was, I saw it, Gerry
- FG I'm telling you no, not that day. Might have been some other day, but not that day, because I didn't go to the window with him when I walked into the bank, I sat down, they have settees like this.
- DK Gerry, OK, all right, I don't know where you were. Maybe it was some other day. I want to tell you this, maybe I was jumping the gun saying that day, that's the only thing I can think of but had, they have a picture of you standing way the hell away from the window. You know the cameras take pictures of the whole goddamn bank. And a picture of Bonacorsa in the bank. This is what bothers me. What was Bonacorsa doing in the bank? How strong is he?
- FG Strong as far as I know, but he got a right to be in the bank. As far as I know about Bonacorsa, I don't think he ever was in that bank.
- DK Yeah, I saw the picture.
- FG Yeah, but they could have been doing anything in the bank. Doesn't mean that he was cashing a ticket in the bank, but he might of, I don't know.

NY 172-90

DK Wait a minute, don't say he wasn't doing anything
in the bank, even they got the pictures.

FG Yeah

DK If he was cashing an OTB check, otherwise they
wouldn't have been able to find Bonacorsa because
there's four million people cashing

FG Could be, I don't know.

DK checks every day in the bank.

FG He could have cashed one every day. I mean, I was
just saying what I think, I mean he could have
cashed one every day, I don't know but, ah, whatever
he, whatever he bet on, wherever he cashes got nothing
to do with me, unless its got something to do with you,
I don't know

DK Who, Bonacorsa?

FG Bonacorsa. Yeah.

DK With me?

FG Yeah

DK Don't even know the guy

FG Well, that's what I'm saying so I ain't worried
about whatever Bonacorsa does

DK What I know about him ain't worth two cents, that's
why I'm worried

FG Inaudible

NY 172-90

DK He's connected with you, I'm just telling you

FG Inaudible

DK I know the guy from way back, and what I know about him stinks

FG There's nothing that, nothing that he could say in my estimation to hurt me of anything that I done, there's no way that he could hurt me. All right, so what else, what was this about, ah

DK They were showing me pictures

FG Yeah

DK Of all the money that was being cashed they claimed that the days I lost money the Brooklyn outfit that you were supposed to be operating with some other guy was cashing

FG I don't think that I was

DKshowing, anyway

FG Well, I mean, they could tell you that there was some outfit from Queens that was cashing at the same time you you was losing, I don't know, I mean whatever they want to tell you to try to say that there was something going on that you didn't know about or something, I don't know what the hell they're talking about

DK ...They also pointed there's another driver that they've got a picture of. Who the hell the driver is?

FG I've heard

DK Inaudible

NY 172-90

FG I know but I've heard that they've said that was Mc Nutt, and I ask Mc Nutt.....(inaudible).....one guy asked me, he said, a, do you know Ken Mc Nutt and I says yeah, they say that they've got a picture of Kenny Mc Nutt in the bank cashing OTB tickets and cashing a check so I asked Mc Nutt the next week about that when I say him...you can bet your life that I never cashed OTB tickets, I never was in a bank to cash tickets, so he says if they got a check, if they got a picture of me it wasn't at the bank, I wasn't cashing any checks so he says don't worry about it. That's all I've heard on that deal.

DK Well, I got, I got the hell out of there, they was just throwing all this shit out at me, saying look we got this, we got that, and you better come up and tell us a little more of what you know, you know a lot more than what you're saying, and I says I don't know shit, but, a

FG Let me tell ya, what they've done is, is guys on little technicalities they can't, they try to arrest and say put the handcuffs on him, arrest him, then they come in and say now look we got you on this, if you want us to drop the charges on this, then you better tell us this, you got to tell us that, when two thirds of them, with 99 out of 100, don't know nothing, couldn't prove nothing, so they'd say well I don't know anything, then they say well, we can't give you immunity you know. So, ah

DK You're talking about the Bear

FG ...I mean to me, somebody said Bear's moved out of town

DK I don't know

FG So I don't know whether they give him immunity, if he moved out of town or what, but the whole thing

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the whole bunch, the only one I don't trust is Bear, but Bear could say that I give him tickets to cash, you did, or anything else...I mean to me there's nothing wrong with it. According to my lawyer, because as long as we can find out before hand, whatever he says so that we can put it down on our income tax next April 15

Ah, he says he cashed \$30,000 worth of tickets for me, I got 30,000 that I won and 30,000 that I lost, I got tickets to show and I pay taxes on time, there's no fraud, but after April 15, if you put down just what you won and what you lost and you don't allow for what him and for what you are else says cash then they'll arrest you and try to prove fraud that you tried to beat them out of that money and have these guys testify that they cashed the tickets. Do you understand? Do you stay with me?

DK Yes, I am following you.

FG So that's what my lawyer told me as far as I told him in the whole thing the only thing I would have to worry about is I did give some guy tickets to cash for me like Bear if we had some winning tickets to cash, I'd give him ticket and he cash I can't he said I can't see when you'd have any problem on that, he looked up books and everything else he said the only time they could get you on something like that as being fraud is after April 15, he said that if after April 15 that if you didn't have that on your income tax, then they can prove that you gave him tickets and you tried to beat the tax.

DK You want me to tell you what scares me?

FG Yeah

DK Inaudible....I'm listening to you because I'm scared, not scared, not scared, shaken.

NY 172-90

FG What have they got on you?

DK No.....nothing. I'm not thinking about what they have on me, now I'm thinking about what's going to come out later, let me tell you. And I'm under the impression they have some driver in their hip pocket, they must have. Now when you were with any of the drivers who do you think could fall down if you got (inaudible)

FG Not a one

DK Not a one

FG Yes sir

DK You said, you said that you was never with them together

FG Never, never, anytime I ever talked with any driver or anybody at all is like I am talking with you

DK You know why I say this

FG Ha

DK You know why I say this. You know the Chink up at outside of Roosevelt with the Chinese Restaurant, he's supposed to be betting a lot of money for, for, for a

FG John Miritello, Insko, Gilmour and some of them

DK That's what they told me

FG They tried to connect this Chinaman because everybody after the races was over at the Gam Wah, which he owns, and why they tried to prove this that there was 5 or 8

years ago this Chinaman was convicted of a charge for with Insko and those guys, in other words, Insko went into this place, they made a big deal out of it cause howsewves, prostitutes and Insko went into his place and he said to Insko do you want a broad and Insko said yeah, made a phone call and a broad came over so they took his liquor license away for a year and closed him up cause of that charge so now from that same thing they are trying to connect him in because everybody after the races would go into his place and eat and they know he bets a lot so they are trying to say that he bet money for these guys. If he did, I don't know anything about it.

DK Well, in the event that they might have one indictment in their hip pocket and if this guy comes back and breaks down and turns around and says yeah, that's the story, bam, there we go.

FG To me he can tell them anything they want to know, just whatever you talk to me you can tell them anything you want to and if I just talk to you about it, it is my word against yours, you've got to prove that I said something, to me there's nobody that can say anything on me that can hurt me

DK Oh, I'm looking out for myself, you're looking out for yourself.

FG Oh yeah. We're still discussing this so that you'll know which way is which. I mean, like to me with these guys coming back and told them like you was going have me like when you talked to me that they make a deal with you to have a tape recorded like when I came in to have take down and have me say things that if you would do it this then they was going to sort of drop that charges against you for trying to get me to admit something, see what I mean,

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that's what they try to do, they try to play like there's going to be 30 arrests after first of September. According to this guy, he from the DA's office, that I talked to like they had one guy come in and they asked if he knew the sweeper at Roosevelt Raceway and showed him his picture, his name, he said no, so then they brought the sweeper in to give him immunity to testify against this guy that he, he was saving all of these tickets for him, uncashed tickets he was selling them to him so the guy would have tickets for...So you understand what I'm talking about.

DK Oh, the sweeper?

FG Yeah. So, so I mean they're arresting him for perjury saying he didn't even know sweeper if he had gone in said yeah I know the guy, I see him at the track there'd have been nothing to it, but he lied and said he did not even know the guy, so now they arrest him, another one they brought a woman in, she cashed a ticket for about \$10,000, they asked her under oath is it your ticket, did you cash that ticket for yourself, she says yeah, they bring her boyfriend in the next day before she goes in they ask him questions and they scare him they say that you're going to jail for five years if you lie, if we can prove if this was your ticket they take him in front of the Grand Jury, give him immunity and she admits it was his ticket that she cashed for him and he gives her \$500 to cash it, so now then arresting her for perjury for lying for saying it was her ticket when it was his.

DK Inaudible

FG Things like that, these 30-40 people, ten percenters most of them, but that's what he told me, so far that's what happened and according to them they was trying to like arrest you that your lawyer even knew before you was going to be arrested.

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DK No, no.

FG According to this guy, they called him up and said if you talk with Dave Kraft and if you still want to make this deal, then what about arresting him, then he still have to fight this charge, we're going to arrest him for perjury, that he lied in front of the Grand Jury and, a, so then they have arrested you. Then your lawyer going to try to talk to you into co-operating with them and tell them whatever you know to get immunity to clear yourself in other words, he's telling you just look out for yourself and tell 'em whatever you know, which they had told him to do, and if you don't know enough about it, they want you to say that you did anyway (phone rings)

Phone call between Kraft and unknown caller concerning business

FG So how did you leave it with them?

DK Well, they gave me until September 15 to make my mind up which way I am going to do about it, going to put the hammer in me. I told them I wanted some more time to...inaudible...There isn't much more I can tell, yeah, you know..inaudible...I have told you more than I already told you..inaudible...They can't give me immunity..inaudible

FG To me if that's the only perjury charge to arrest you on unless you told 'em something I don't know.

DK No

FG To me. My lawyer laugh shit for 15 minutes what the hell the guy in front of the Grand Jury said he only cashed one ticket and that's what he did cash for himself the other ticket it wasn't like him cashing it was for the other guy, it wasn't him he says. I'd

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show it to him right in the book there, right in the law book, he looked it up, he showed me certain case, so and so against so and so, and as long as somebody gives you their permission

DK How you makin' out with Connie?

FG Nothing they just

DK ...they ain't bothering her

FG She's been into the Grand Jury once and took the fifth and that was it

DK and that was all?

FG At first this lawyer was trying to make a deal with them to give her immunity and she tell 'em whatever she knew and a, the whoever he was, talking with says, she would have to say more, she knew about fixed races or somebody wasn't going to win or somebody was going to win and what she don't know, and she told 'em I can't testify to something will, and he says if you decide to testify, well come in and give your immunity, and so that's the way it was left.

DK You know you still you know she, she bothers me, you're not worried about her

FG No more to me they only one I'm worried about is Bear Which he can tell 'em because I'll tell you why he just like told me that he was trying to to make any kind of a deal he could with them for him to get immunity because he said they got me, there's been four testified that I've give 'em tickets to cash so a, I mean he was going to tell them anything he knew so the only thing that he could know that could hurt me, I don't know what he knows

NY 172-90

that could hurt you, that I did give him tickets to cash and that I did have him buy tickets for me so if there's something wrong with that then I'd be convicted of it, if I can't prove different, if they should ever question me.

DK They claim that you have about \$600 - \$700,000 somewhere and IRS is going to get it so I'm telling you now

FG They told someone else that went in there that I had two million

DK I, ah, how much you got?

FG Hum.

DK I said I'm not asking you

FG No, I'm just saying that's what they told someone, they told somebody that went in there that I had won and they can prove that I won two million dollars on Supers they were going...inaudible...So good luck to them. They have whatever they can get as far as I am concerned. See, what they don't know is, what they think is that if somebody, if you went in today and had somebody else cash for you or something else 10,000 dollars, they put it down you win \$10,000. I mean, they don't know that you had to spend probably 11 or 12 thousand dollars to get that ten so instead of him, they got you winning -1,000, they got you winning ten, so whatever anybody had told them that they cashed tickets for or anything they got that as all winners. I mean if they, I mean they don't think

DK You don't know this guy Richie in Brooklyn, they were so strong about him, some kind of a Brooklyn gang that was cashing a lot of....over there, Jesus Thrist, they said that....I don't bet according to

NY 172-90

the number of the tickets I bought in OTB in Staten Island, see I bought, I bought only in the one place all the time

DK If they hit according...the sequence I, that I purchased horses

FG Uh, hum

DK And I didn't cash any winners because I didn't win anything they could tell from what I purchased

FG Uh, hum

DK That this other clerk, this Richie or whatever his name is, Richie or maybe I got the wrong name, anyhow, some young fellow over there, the..inaudible..

FG I could have been 10 different outfits buying tickets

DK No, did you have a guy over there?

FG Never

DK You had no clerk over them?

FG No, never

DK What about Murphy in Connecticut, you know Murphy, don't you

FG Sure, I talk with Murphy

DK And he never had any of your horses:

FG What do you mean?

DK You gave him your horses?

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FG No, yeah, if I like something I told him what I liked, but Murphy never bet, I don't think he ever bet 10 times durin' the time the whole thing was going on, and that was most of the time he was going down to the track he'd call me or if he come down me, he met me if I like something, but Murphy to me I don't believe, in fact I think Murphy was in the hole, I think he lost money because Murphy would come to the races and if you liked six horses he'd try to handicap and leave out one more and bet 360 or try and take one horse and key him with the rest for 180, that's all he would invest, I mean he wouldn't put up no money

DK ..inaudible..they were popping names like crazy, those names I remember, Murphy I remember

FG they ask you about Murphy?

DK about Murphy, I see, cause I know Murphy.. on account of Milton, Milton was a car dealer with him, I know Murphy owned some horses with Looney. I said well I could get out of here, but I don't know that lawyer knew I was to be arrested, do you want me to tell you why. My kid was sick when I asked that lawyer to call them and let me alone while he was sick cause I had to take care of the business, the boy was in the hospital, a very delicate situation, so he did that and for three weeks ro whatever that time was, and nobody bothered me, and there was no phone calls and I wasn't needed by anybody.

FG Why would they get back in touch with your lawyer

DK Wait a minute, let me finish this now, let me finish this, you're not hearing me out. When the kid got well and went back to work on a Monday morning, I called the lawyer and told him I want to talk to them

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its time, my kid's back to work, I got time to go and see them now and lets start getting into this thing, he says why don't you have lunch with me on Tuesday. I met him on Wall Street in New York, Tuesday for lunch, and I told him to talk to them and see if I could come in and see what he, arrangements could make about immunity or whatever he could make, so, OK, he did after he had an appointment for Thursday with the DA with Connie for Thursday. Wednesday I got arrested so that's why I didn't think he knew it cause I had to hunt all over the map to find him when I got arrested that day. Tuesday I left him for lunch, Wednesday he was going to meet Thursday to talk to these people so unbeknownst to him, they already made arrangements to arrest me, so on Wednesday they picked me up already and then I had to go all over the map to find him, where he was, was in his office get down there. And what makes me thing that he was no party to anything like that. They had no idea I was trying to reach them through an attorney, after being with him for lunch on Tuesday, after coming off this three weeks of illness that I asked the lawyer

FG

According to this guy in the DA's office, they talked with your lawyer, they haven't talked with you and they told him that they would give you immunity if you would come in and tell what you know and he told them approximately what you can testify to and they said that is not enough if he does not want to give us more and tell us everything, he knows, that he knows that they were fixed races and that he knew that some guy wasn't going to win and if he don't want to tell us these things then we are going to arrest him. We have a perjury charge against him in the Grand Jury so they left it with him that he was going to talk it over with you that weekend or something then get back to them on a Monday. After they talked with him like we say on a Tuesday afternoon or something when they couldn't get anything through him they came to arrest you on Wednesday, now according

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to this guy, now it could be that he didn't even know about it. It could be he's telling me how they work, you know

DK They couldn't have known about it

FG I don't know but he told me that this lawyer has worked close with them and has tried to tell you and even suggest things that weren't even true-not saying in that words to get yourself off. He's saying at this point of the game they told him we'll just let him off if he just suggests things to us that isn't true if he, you, say that there was, I mean in other words, they would be enough to clear him, well, in other words, if you would go into them and say yes, ah, they have told me that this horse was dead - Gerry told me this horse was dead..inaudible.. so they would have something to arrest me on for you to be a witness against me in that they would drop the charges against you which I mean, in other words, the phoney up charge that they arrested you on anyway if it wasn't that charge they were going to arrest you on something else so they were going to arrest you on something that was a ~~phony~~ charge so that they could use a level with that charge against you to try to get you to say something because they think you know more then you do. They think you had talked with the drivers and was with me every night at the track. They think you were with they think you were with me when I talked with some drivers and the drivers said what was going on and they think you was there and that you could testify to that. If you wanted to. They think that. You know.

DK Well, ah, you know I was never there

FG That's right

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DK Cause I went over to OTB there, but that, but this
guy's out of the the government office, the DA's
office that's on this case

FG Uh huh

DK Ah

FG But let me tell you now there's three different
outfits working on this. There's Harness Track
Security, there's the ah Crime

DK Organized Crime

FG Organized Crime

DK Strike Force

FG Then there's ah, District Attorney for District
Attorney's office the different counties for New
York

DK Right

FG Because.. As of right now according to him there's
going to be 30 or 40 arrests after the first of
September on these ten percenters and.....like
that and they have got 4 or 5 arrests that they're
gonna make on fixed races at Monticello. That
they can prove, that they got witnesses....but as
far as Superfectas at Yonkers or Roosevelt as of
now they haven't got anything but they got a lot
of people that they're trying to give immunity to
and trying to work off things, so that they can
get even slight enough evidence to try to try, ah,
cases for Yonkers and Roosevelt. According to him
and, ah, he's got no reason to lie

DK Inaudible

NY 172-90

FG But he says they have got some cases they got about 3 or 4 different races and cases at Monticello that they're gonna arrest some of the drivers on But he said there isn't a one of them drivers that races at Yonkers and Roosevelt

DK Then he might as well get Herve for.....once we get him up there

FG Sure they can call in Billy Haughton and Herve Filion and Stanley Dancer and

DK Well, they didn't race up at Monticello

FG What, no no, yeah

DK I'm taking about Monticello

FG Oh, but they are going to make some arrests up there, guys that according to him, and according to him thirty or forty arrests on these guys, he said that so many of the 40 arrests they're gonna make on ten percenters it was just foolish things that people testified to that they were scared it would they could check and prove that they lied. I mean, you know so and so and I mean like should they say to you so you know Forrest Gerry. No I don't know him. I mean they figured he be in trouble if they ask guys if you..inaudible...tickets

DK Yeah, I know

FG Therefore what they do they have gone to the other guy and give him immunity to testify like they got one guy a ten percenter, they asked him if he had ever given a ticket to the Bear, or if Bear had ever given him a ticket to cash. He was given out money and taken tickets and giving it to somebody else to cash them. So they went back to him and said we have given Bear immunity

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and he testified that he had given you some tickets to cash and paid you ..inaudible

DK

Does Bear have immunity

FG

According to this guy in New York, Bear..inaudible.. But I know according to this guy he told them everything he knew as far as buying tickets, cashing tickets and that if they would give him immunity he would say more things even though they couldn't prove him...inaudible..But then last Monday he was back to the Grand Jury and he didn't go before the Grand Jury again so they give him immunity why did they bring him back to the Grand Jury. He was back there last Monday to testify. But I don't trust him because the way he..inaudible..with me I mean, Well, I got to do the best I can...to try to get myself out of this. If I have to lie, he's gonna lie, in other words, he's gonna have to say that things was goin' on, he didn't know about. He'd ~~said~~ that's the way he acted with me and I....I don't think he should say you know anything that wasn't true or I know anything that wasn't true or, I mean, there is such a thing as protecting yourself and telling them everything you do know yourself but not add things to it.

DK

Did he get immunity? I don't think so

FG

I don't think so

DK

What

FG

I don't know. I don't think so but they had told this guy that they gave immunity, and then this guy says that he did give him some tickets...cause they tell you when they're questioning you they tell you all this stuff and I mean they might be questioning you and tell you Bear's gonna testify against you and I'm gonna testify against you and that you knew somethin

went on in the races...see if you believe it so they see how you react to it and see what would happen, they may try every angle there is if they think they got a shot to get somebody scared or something and the worse thing that scares somebody is to arrest them on a charge and have 'em think gees, I'd get convicted of this and I....you know but it doesn't make any difference if they can convict you of it they're gonna convict you of it anyway. And if they feel as though they got something against you they're not gonna give you they give somebody else immunity to strenghten their case on you

DK Oh yeah. You don't, you don't fear them that they might have a, a driver in their hip pocket like they said, that's what they indicated to me

FG I don't

DK You got horses in Bonacorsa's, ah, Bonacorsa's barn

FG There's no horses, let me tell you, Bonacorsa claimed four or five horses and it was my idea that he claim them. But it was for this guy in Chicago, this guy that I used to have horses for in Chicago....and he was seeing how much better horses they was here for the price than they are in Chicago, so he said I'd like to claim some horses here and take them back to Chicago with me. And I said well the only way you can is, you got to claim them, they got to stay here for 30 days and race 'em then ship 'em back. So Bonacorse was there and he made a deal with Bonacorsa. Bonacorsa claimed him "Jet Butler" and four or five other horses for him, him putting up the money, Bonacorsa racing 'em here for a month or so and then ship 'em to Chicago to there was, went in testified

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and then called Bonacorsa and where was he getting the money to buy these horses and they had an idea that these horses he was getting was mine

DK inaudible

FG Yeah, but they was not my horses....other than I did talk with his kid and talked with Bonacorsa and I'd say well "Joe Butler"'s a good claim or this horse is a good claim

DK "Jet Butler" was

FG Yeah, but I mean horses like that one, every horse that he claimed was a good claim but they hadn't wasn't for me I wouldn't have no horses for Joe Bonacorsa or, uh

DK inaudible

FG That's what I'm saying, Jesus Christ of all people in the world, if I was going to have a horse it would be with somebody who could do something, not Bonacorsa. I mean I like Joe, I talk with him I mean as far as a horse goes

DK Sure

FG He's the worst, the world's worst

DK inaudible...I know

FG So that's how this guy used him and on this they called Bonacorsa in and he went in and told them this story he got signed affidavits from this guy, this guy belonged to the USTA and everything, that he lent Joe the money to claim the horses and as, after the horses raced then Joe could either send him the horses or pay him back the money and keep the horses and they got all signed affidavits and

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everything on this whole thing and.....

DK All right

FG So I'm not worried about that

DK No well I mean they threw that at me and they know he's got a bunch of horses which Bonacorsa....I don't know....Well, how did Bonacorsa get hooked on these horses?

FG He wants, he wants back in..inaudible..horses left together. So I know you didn't..inaudible..I don't know Bonacorsa, I don't know the man

DK I know of him. What I know of him stinks. He's a bad man, bad horseman, bad everything. He's a liar, he's a bandit, he's a thief, he's a poor horseman, he's done everything in the world, I just don't, I don't ..inaudible..

FG Well, maybe part of that..inaudible..he wanted them horses run...They put two and two together and tried to say it was me, cause they have guys going in an testifying that it was me

DK I couldn't, I couldn't...

FG Claiming it was me, but it isn't

DK Oh, it is, it is! I don't know...

FG But it isn't the truth, they wasn't my horses. I'm sure if I was going to have any horses that they wouldn't be....

DK Its none of my business

FG No, but I'm just, I was just ellin' you...but as far as a...

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DK They also tell me that the...they're sure about...
inaudible...do you know how deep Carmine 's in this
thing?

FG Ha! Ha! Huh? What, how deep he is in...

DK No, no

FG Oh, in racing you mean?

DK Yeah, in racing, cause, I'll tell you what, were
they talking to Carmine?

FG They claim that they had the investigation all..in-
audible...ah, Roosevelt. The meet before, when there
was, when they stopped the Super

DK Right

FG They called in all the drivers and he questioned
them and they did call Carmine at that time and
questioned him and everything was dropped

DK They said something about, they knew that you had,
you were at the cock fights with him, Sundays at
his house...

FG Yeah

DK So...I don't know what it means...inaudible

FG Well, how do they know about the cock fights?
They know.

DK That's right

FG You tellin' me, everything that they know like this
on details

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DK Well that's right, they wanted to know if you was catchin' chickens...you were fightin' cocks over there, were there any other drivers there? I said well you'll just...

FG inaudible..that's all

DK But no one were your drivers though

FG No...and Claudia come over there...but ah, nothin' as far as ah...let me tell ya they's nobody any more closed mouthed or won't talk or anything as Carmine. And I mean even if you did talk with him you couldn't trust him anyway

DK Oh!

FG So I mean, ah, but, and Carmine...Carmine say anything, he'd be hurtin' himself more than he would anybody else, right?

DK Yeah, he's a rabble, he rabbles, that's what I'm afraid of...

FG Yeah, but wait a...

DK They got somebody in their hip pocket...

FG I don't care, Carmine...we'll say it was you, put you in Carmine's place

DK All right, go ahead

FG All right. They should say to you, did you fix any races, did anybody approach you, if you should say yes, ah, Dave Kraft did, ah, you'd be getting yourself in more trouble than you would, Dave Kraft would

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DK Right

FG You was the one that was doing the

DK On the other hand supposen he's been given immunity
so he's out of the picture. He has no trouble

FG They, they'd take his license away from him, he'd
be barred from racing for the rest of his life for
not reporting it to the Racing Commission and for
pulling horses no matter who asked him to do it,
if he received money or.....

DK Then he's fired

FG Sure, no matter what the District Attorney,
they'd say to him will give you immunity and you
won't be charged with anything he wouldn't have
to be but the minute they get that on his records
hed be barred from racing

DK Ah

FG Right?

DK Yeah

FG So, there's no way any driver can say that, that's
what I'm saying

DK Well, you know...some little maybe they got a "flea
bag" up there that they got scared

FG Anybody...nothing to do with me. Let me tell you
as far as I can make out on this there was a lot
mote outfits betting on Superfectas and betting a
lot more money than we was. I mean at first I

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figured we were probably the only ones that was betting and betting... but then what I've heard come back two million cashed and four million cashed and this guy done this and that, I mean to me, ah, that was nothing like what we was doing so

DK Let me tell you something, Forrest, you know damn well I never, I would ah, I, I, I, I couldn't believe what I saw because I, ah, I couldn't comprehend money like that

FG Uh huh

DK You know I played it straight when you told me this is what we did, I did it

FG Sure

DK And then what the comeback was was funnier, we were betting money that, ah, the money that was coming back was ridiculous

FG Of course, it was but that's the chance that we had to take money and you knew as far as you and me know that I was telling you what I knew because I was getting half if we made money

DK That's right

FG So I mean would I wanna take and not tell you exactly and to lose money, well I mean they, they fish the things just like a guy who makes a bank robbery, ah

DK But they told me

FG Rob somebody, wait a minute, he robs somebody and he gets ten thousand dollars so he's got a partner

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the minute they call that partner in they say to him well, you know that he got 40 thousand dollars on this job, you know, so all of a sudden the partner's thinking Jesus he told me he got ten, he only give me five and this son of a bitch got 40. So then he starts saying if he done that, then he asks he did, he done this and then they tell him so that's what they use as, some guy cashed two million or something and, ah, you figuring well shit, if he made, cashed two million or four million and I was only cashing this, then he wasn't telling me you know, which you and me know with the connection, with the relationship, we have that it had to be whatever was happening, because for sure I ain't gonna have you bet half of my money on some...

DK

Yeah, but they claim there's....money bet

FG

Of course there was there was four or five hundred thousand a night on, bet on Supers but...we wasn't betting it. There was other people betting Supers and some outfits ah, do you know this Hecht column, ah, that writes in the "Post", he was writing every day in the Post how, ah

DK

Oh, yeah

FG

He says that this guy ah, what the hell did he call him, Freddie or something else, he was betting ah, ten thousand a night for Supers and just leaving out the favorites and he was boxing the rest of 'em and how he was hitting this Super and that Super, now this was common knowledge in the paper before they ever stopped the Supers. This was common knowledge, cause Hecht was writing about this guy, what the hell did he call him, Longshot Freddie or Joe or something Pete or, he'd say last night

Longshot Freddie left out the favorite that was four to five cause the horse was lame warming up and he boxed the rest of em for 10 thousand and he win the Super ten times. He got back 100 thousand, I mean he was writing this in his paper every day. So I mean there was sure a lot of people betting Morty Finder every night that they had Superfectas they'd bet for ten thousand. That was his bet every night in Supers, which ain't nothing he bet 10 thousand on every other race practically. He bets 10 thousand on at least five thousand, at least five races a night every night. But every night in the Super he was taking some horse and keying on him or taking a couple of horses and leaving out and betting the rest and he was in and he was...for 10 thousand. Which give him, so I mean that the other people was betting the Supers and doing things that we don't know about that I don't know about. So, I mean, if its the law, if you didn't have the right to bet Supers

DK inaudible

FG Then, ah, you you broke the law you done something wrong, but to me you got a right to bet anything you want to on the Supers on any night as far as I'm concerned. Win or lose, I mean there ain't nothing you can show them for sure, I mean you could've saved a lot of tickets ah, night after night, you can show them where you invested eight thousand, ten thousand and have, didn't have a winner, right?

DK Hm-hm-hm

FG There was other nights, that you can show them where you bet eight or ten thousand, had a winner that paid five. So I mean is that anything going on is that something I mean you was handicapping, you was boxing

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the horses and if a, if a big one come up and you happened to have it a few times you made money, if not you lost money. But I'm not, I mean to me I don't think that you have anything to worry about because what the hell drivers could say that you talked to 'em....

DK No, I'm not, I'm not worried.

FG I'm not the least worried about them saying anything about me because they'd have to lie to say it.

DK Well, I just...I, I know I didn't talk to any drivers... it was leaked back that they had a driver in their pocket, they, they had a driver..inaudible

FG ...couldn't implicate you anyway because at any time which your story is that I talked with you about any race that you...say that I would like a horse you would like a horse and we handicapped it and we left out two horses and we put horses in I mean that's right, I mean, ah, sometimes we lost sometimes we won sometimes we lost. But we have got to say is, sometimes I did have you bet something for me if I liked horses I'd say box them three times for me...some nights you'd say to me well I like these I can't get to OTB, you box these horses for me. That'll cover our song anytime that there was some tickets that you and your man cashed at the one or two in between of somebody else, alright? D'ya understand what I

DK Right

FG Huh?

DK The tickets that I had to give you later on

FG Yeah

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DKthey got some other group you got cashing 'em
FG That's right
DK Cover that with me, the way we covered that was,
ah, you asked me to buy some tickets
FG Sure, sure you bought tickets for me I bought
tickets for you 'ats all, sometimes you'd either
give me the money sometimes I'd give you the
tickets
DK Straighten out later
inaudible
DK All right
FG ...coming
DK Ah, I'm not going back there again without
FG I wish
DK inaudible
FG I wish you'd've gone over and talked to this
Bobick...
inaudible
DK You know, ah, up until yesterday this is...
FG I know but this is something important it ain't
DK Well, I'm staying away from him that's why I figure
I'm important enough if I stay away I ain't saying
nothing

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FG That's right

DK The further I stay away...anymore, now you just
told me a lot of things here that I haven't heard
and the more I stay away I think the smarter I'm
gonna get

FG That's right

DK Because I

FG ...you might like him but I don't like this lawyer,
because of the only thing that I don't like

DKbe over in a hurry

(inaudible)

FG Yeah, but I'm just telling you on the story that
he told Connie, he said to Connie now look you
look out for yourself

(inaudible)

FG And he told her that she, not only that we went into
his office the next day, I got pissed off we went
into his office the next day and she said to him I
told you what you said and he looked, ah, all different
colors. I said you told her this well he said you
know the first one that comes with me is not who pays
me its my client, and she's my client. So he says
I'm looking to get off and I said hold it, would you,
if it, we'll put you in her place. Would you go in
and testify to something that wasn't the truth just
to....he said well what I advise my client to do and
what I would do is two different things, well I said
I asked you first he said no I wouldn't answer, I

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said now see that to Connie he's just telling you that you should do it. And he admitted it right in front of her, no he said I wouldn't do it but he said

DK

Hm

FG

So, I know that he's working for the office down there and trying to tell her to go in and say things, what he told her she pumped out of her everything she knew and she told him, he told them that and then he advised her and they said well this isn't enough for her to get immunity that she's gotta know something about fixed races, times and dates, but she don't know nothing that she could testify to or anything so he says they said she has not have enough for immunity. So he said to her well it wouldn't hurt if you said something like this or you heard this...inaudible...So I said the hell with him, I'll take it to somebody else who will talk to you like a man who will give advise at least strong advice not somebody who is going to tell you this much bullshit just to try to get you off the one thing you know..inaudible...I take it to this other guy..inaudible..he is going to tell them exactly what..inaudible..and everything else. And she will probably be arrested because they found out in which they didn't know it before that this lawyer told them how she cashed two or three tickets under a phoney ID card. That's why he wanted immunity for her so they didn't know about it but once the lawyer told them that they knew about it. So I mean..inaudible..So they didn't know about it until this son of a bitch told them about it. They said to him, what do you want immunity for her. I mean, we have as of right now no charges. She hasn't testified. So he said she has done this. Stupid thing, she has done this, she has

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done that..inaudible...he gave her the names
she cashed it under..inaudible..To me I don't
think a lawyer should be doing that. Well we're
all set. I wanted to get this straightened out

DK

Alright

FG

So I just

DK

Alright, I'll talk to..Gave me call..If I don't
get straightened out on this I'll probably get
back to you

FG

You're not going to talk with any other lawyers
or

DK

Oh, I will, I'll probably get to that guy of yours
now but I'm not going back until I talk to somebody.

FG

Yeah, I'd do it too

DK

I'm not going back there until, have a, sit down
inaudible

FG

From three thirty on every day he's in court all
day until three thirty, three thirty to six thirty,
so all you have to do is to pick up the telephone
I'll be ..inaudible.. four, four thirty. I'll
talk to him and tell him exactly what your story
is and see what he has to..inaudible..

THE AUGUST 30, 1973 CONVERSATION

FEDERAL BUREAU OF INVESTIGATION

Date 9/7/73

The following is a verbatim transcription of a conversation between FORREST GERRY, Jr. and DAVID KRAFT in the office of DAVID KRAFT at Krafthill Farms, Farmingdale, New Jersey:

K - DAVID KRAFT

G - FORREST GERRY

Transcribed September 4, 1973, by SA JAMES W. WAGNER.

K- You having any problems with the FBI?

G- No.

K- They just ^{did} got my books yesterday.

G- Yea

K- All my records.

G- Why? What is the problem ...?

K- Well, what's wrong is I haven't made any entries with those two horses.

G- (Unintelligible) ...with the bank, so they've gone through that, so it's just ... (unintelligible) ... no problem. Does everybody have their books up to date?

K- No

G- There's nothin you're tryin' to hide, you put the money right through the account and everything else.

K- Hey, ah, don't answer it that way. You make it sound so easy, but

G- No, I mean if you're doin' something wrong here, you're doin' somethin' wrong, but what have you done wrong?

On 8/30/73 at Farmingdale, New Jersey File # 172-90

by SA JAMES W. WAGNER:cmt Date dictated 9/4/73

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- K- Don't sound off that easy pal, cause ...
- G- But I don't know what you've done wrong, cause you're trying to make out that you've done something wrong and I don't know what the hell you've done wrong.
- K- Well I ...
- G- You bought two horses for \$21,000 ...
- K- I didn't buy any horses, that's just it, I haven't got them in the books ...
- G- Oh, well, ... (unintelligible) ... book they were in Kraft Hill Farms
- K- They're not in Kraft Hill Farms
- G- Where are the checks coming from, where were the horses earning the money?
- K- That's what I'm trying to tell ya, they're not entered in the, the, entered in or out and they've got to be checked out, there's something cockeyed, why are they, why do they bother me?
- G- They're just trying to bust your balls that's all, because they think that as long as you got that dizzy prick you got for a lawyer, as long as they bust your balls, that you're gonna come in and tell them more. They think you know more than you do? That's all. That's all I can tell ya. Cause, ah, I can't see... but I mean, above this deal on the horses, I can't see one thing that's worrying you, one thing wrong about it.
- K- Ah, you can't see nothing because it doesn't bother you, it bothers me a lot, because I've got a lot of things that I've got to lose that you haven't got to lose, that's, that's what bothers me ...
- G- You got something to lose DAVID, you got something to lose (unintelligible), but what the hell did you do wrong? If you bought two horses and Turcotte raced the

G- horses, all the checks came to you, they went straight through your account and everything, now what the hell is wrong there? What the hell did you do wrong? When I bought the horses from this guy, I told him, they're in his books, as I was buying them and paid you from Kraft Hill Farms. An I've even checked with him ... So I mean, an he knows it was legitimate that you bought the horses. No I mean, ah ... an, an the horses paid, the checks were sent to you, somebody signed the checks and put them through, you signed...

K- But you have to issue a check to purchase these things ...

G- No, you don't, you bought them for cash.

K- Where do you get the cash from? What do ya think, it comes out of heaven?

G- What? Ah, I'm sure that you have \$20,000 in cash ...

K- Who?

G- That you can show, I mean you, I mean you as taking ...

K- Do you have \$20,000 in cash to show?

G- Yea I do

K- Sure ya do, but I don't

G- Ya, but I mean, you can show that you were buying \$10,000 worth of tickets a day. So if you're buying \$10,000 worth of tickets a day you sure got \$20,000. But it's just, you purchased the horses, and you've sold the horses, I mean it's just ... you've got the money back, how do you happen to get the money back if you didn't purchase them in the first place?

K- You make it sound so easy!

G- Well, it is so easy, I mean I can't see no problem for it. I can't see how you can make something out of it, that there isn't there, that's my opinion. I mean when you purchase something an the checks come to you an they was put through your bank, when the horse was

- G- claimed you got the check and you put it through your bank. And one thing I can't see is that there was any problem. If you'd a been trying to hide something from purchasing the horses, you wouldn't a had the horses put in your name, you wouldn't have pur the checks, as the horses earned the checks, you wouldn't have put them through your bank, I mean you would've tried to hide them. You didn't try to hide nothing. So you bought horses for \$21,000, you sold them for 15, you got a 6 thousand dollar loss. So, I mean, I can't see nothing that's ah, that's the problem.
- K- Well you make it sound real easy. *no denial*
- G- Well it is DAVID, you know, I mean, I can't see what you're trying to make out of it that isn't easy. What's the problem?
- K- I'd like you to come down there someday and see how easy it gets.
- G- DAVE, I've been through more Grand Juries ... if you go for the next year, you won't be to as many as I was. For two straight years I went every week ... every ... twice a week. Tuesday and Friday, everyday. Some days I just sat there all day long. Other times they'd tell me to come in ... then they'd, all they'd do is come up to me on Tuesday and say come back Friday. Friday they'd say come back Tuesday.
- K- You ought to take the bar exam
- G- Yea, I don't know why I should take the bar, I don't know the first thing about ...
- K- You're telling me, you're telling me advice and I don't think you're qualified to be giving me that
- G- What advice ...
- K- Telling me I don't have anything to worry about.
- G- You haven't got anything to worry about?

G- What have you got to worry about? I mean where was the checks coming from for the horses and one thing another, if you didn't purchase the horses in the first place? Right?

K- I mean, if you don't come up with a check drawn to show where you purchased the ... *no denial*

G- Any (unintelligible) ... nine out of ten horses that are bought for 100,000 or 200,000 dollars in this country is not paid for by checks. They's not hardly anybody that will release a horse ... I buy a 100 horses a year and practically everybody that deals in horses will not accept a check for a horse, they want cash, because, they will not give you the horse and they will not give you the papers, because if you take and buy a horse from me today for 10,000, right, you take that horse an you give me your check, you can take that horse home ... he can break his leg, he can go lame, he can do anything before that check is cleared and you stop the check. Now they's nobody, practically nine out of ten, of all horse people that buy horses an everything, they buy for cash. They will not accept a check for a horse. The only way they'll accept a horse, a check for a horse is if you give me a check, I'll wait until it clears. Once it clears I'll give you the horse and papers. Other than that, I won't, I mean I know of everybody that deals with horses ...

K- Well there's nothing wrong with that.

G- Yea. So that's ... why did you have to take ... the horses was in New Hampshire and before he would send them horses from New Hampshire to Roosevelt, he wanted the cash. I mean he wasn't gonna give you the papers on the horses and the horses ... So that they could go lame. You could do ... a guy can the score the horse, that's 100,000 dollar horse in one day. So he wasn't gonna give you the horses and the papers and everything until you paid him the cash. I mean ... you can bring any horseman in the world, BILLY HOUGHTON (ph), STANLEY DANCER (ph), onto the stand, and they'll tell you that half of the horses in this country is purchased by cash. They won't let ya, they won't let ya pay for them in checks. Because there's so much can happen. It isn't.

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- G- like buying any other merchandise that you can go take back after.
- K- Well I don't want to argue with you but you can't stop a certified check. *no demand by Kraft.*
- G- You can stop a certified check and I'll bet ya all the money in the world ...
- K- All you have ...
- G- All you gotta do ... no chance ... You ... I'll give you a certified check tonight and I'll stop it tomorrow morning.
- K- Only on, only ...
- G- All you gotta do ... no chance, I'm telling you DAVE I can do it. I'll bet ya. I'll bet ya a 100 dollars and I'll prove it to ya. All you gotta do is if I give you a certified check tonight for 10,000 dollars, all I gotta do is walk into that bank tomorrow and put, and stop that check. I gotta put up 10,000 dollars more. I gotta leave 10,000 dollars there in case that I lose, that you can collect your 10,000 dollars. But that check is automatically stopped that I give you for 10,000 dollars. A certified check is no better than a personal check. Now I've been through it, I've had them stopped on me. And I said to me a certified check is perfect and I had a guy stop one on me for a horse. And I said they can't stop it. All they have to do is put up that same amount of money that's held in escrow in their bank on that check and the bank will stop a certified check. Now you ask your banker call him. I'll bet all the tea in China, I'll give you ten to one a hundred to one, whatever you want to bet.
- K- No, I don't bet ...
- G- Well, I'm telling ya. You can stop a certified check.
- K- Hey, listen, I'm done. I'm done betting.

- G- Yea. But a certified check. There's nobody gonna ... a personal check ... but I mean as for as you paying cash for them horses ... That's nothing out of the ordinary, nine out of ten horses that's purchased, is purchased by cash. Because to me, if I don't ... to me I'm not never gonna give up a horse to somebody, and the papers on a check. Cause I've been through it. They take them an train them once, they don't like them, they stop the check, the horse is lame when you go to get him. I mean, ah, anything, when they give you a check. Especially a guy in Maine, selling you horses here in, in, in New Jersey. Is he gonna send those horses and the papers down on a check? They don't do it. So I mean that's ah, *in between you*
- K- Well anyway there was a lot of, a lot of other shit that went on back there. This RICHARD PERRY (ph), they tie him to you with a lot of money.
- G- I don't even know a RICHARD PERRY.
- K- You, you lie when you say you don't know him.
- G- Well I'm telling ya that I don't. Now I know ten "RICHIES" (ph), but as far as a RICHARD PERRY, I don't know him. I don't know a RICHARD PERRY.
- K- He cashing for you?
- G- No chance
- K- Well that's what they say. They showed me pictures of you an him.
- G- Of, of me an him?
- K- That's right. (Unintelligible) ... a lot of money through with him. You tell me that you weren't cashing with him as well as tying with me, at the same time tying in with him.
- G- I don't even know him

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- K- That doesn't make any sense.
- G- Well I'm telling you I don't even know a RICHARD PERRY. I know ten different "RICHIES" around the track, but I don't know a RICHARD PERRY. An I was not giving any "RICHIE" any tickets to cash at all. I don't know ...
- K- You say that (unintelligible) ...
- G- They can make ya, they can show you anything to try an make you tell them what you know.
- K- They can't make pictures up.
- G- Hah, of what? What can they make a picture ...
- K- Of you an somebody who's supposed to be RICHARD PERRY, I don't know the guy.
- G- (Unintelligible) ... they can probably show you a picture. They can probably show you a picture of you an, an JOHN D. ROCKEFELLER, but that don't mean no difference that you was doing business with him.
- K- But the guy, that was cashing a tremendous amount of money that they have (unintelligible) ... he had nothing to do with me. He had nothing to do with me. He must of been having coffee with you or something.
- G- Huh?
- K- He must of had coffee with you by mistake.
- G- Probably so at the race track, ah, there's a lot of people around. But as far as me doing any business with a RICHARD PERRY ... but I don't know what the hell that's got to do with you anyway.
- K- Well ...
- G- What's RICHARD PERRY ...?
- K- Well, I'm gonna tell you this, I'm gonna look out for myself.

G- I don't blame you. An I don't (unintelligible) ...

K- So I can tell you ...

G- You tell them anything you ... want to tell them.

K- I intend to look out for DAVE KRAFT on my own interests.

G- That's right.

K- I don't know how I'm gonna do it but ...

G- Well, just, just tell them the truth.

K- Just wanta tell ya that you look out for yourself.

G- Yea, you tell them the truth, I'm looking out for myself.

K- An I wanta warn you that it's not as simple as you think it is ...

G- No, well I don't know, I mean you've done something that I don't know about.

K- I've done something?

G- I say, if you've done something that I don't know about, then you've done something wrong. But whatever you've done that I know about, I can't see that you've done anything wrong. And if I had RICHARD PERRY, ah, RANDY PERRY, ah, JOE (unintelligible) that I was doing business with, but what's that got to do with you? Does that tie you in with anything that ah, ...

K- Yea, it ties me in with a tremendous conspiracy, that's what it ties me into. That you ...

G- Not if you don't know somebody DAVE. They can't say that, ah, that they can tie you in with somebody you've never met or don't even know.

K- Well anyway.

G- Yea, well I don't ...

K- Ties me into a conspiracy that could be a lot of trouble for me

G- Well ...

K- An I gotta fight my way out of this thing an it's gonna be a lotta problems for me one way or the other. That's why ...

G- For everybody ...

K- I don't intend to come out of this thing without, without, having a battle. I don't think it's as easy as you think it is.

G- Well, I don't know what ... if you told me all you told them, what you told them I told a lawyer exactly that an he says it's no problem at all. He said I could get that thrown out in fifteen minutes ... of what he said in front of the Grand Jury. He said how would his lawyer, would even let them arrest him, so perjury on saying something like that. He said all his lawyer had to do was tell him, in five minutes what the story was and there'd be no case against him. I mean you had a right ... if you cashed tickets, they asked you did you cash tickets, those tickets was not for you, they was not your tickets. They was this other guys tickets. You cashed them with his identification, right? So, ah, it's hard for this lawyer, if you'd a spent an hour an gone and talked with him ... but you didn't wanta do that, I mean, to me you think ... I mean, well you're busy I know that, but still something like this to me was more a part of ... I wish you'd a gone an spent an hour talking with him. Cause I mean he's a top lawyer an he knew exactly and looked up the laws an had different cases right in front of him.

K- Well, they put ya through a ringer, I'm gonna tell ya that pal.

G- I told ya, I been through the ringer, but let me tell ya, you've got nothing to worry about other than what's you've done.

K- Yea!

G- Other than what you've done, what have you got to worry about? I mean you bought tickets, you won an you lost. You bought tickets, you cashed tickets, ah, to me what have you done wrong? I mean they can take you in there an tell ya they know this on ya, an that on ya, ah, they make it sound like something big, but, I mean you take an think it over, what have you done? What have you actually done? Haven't you got a right to bet on horses? Haven't you got, got a right to won? Haven't you got a right to lose? You can sure show them that you've won an sure show them that you've lost.

K- Oh, I intend to.

G- Well, so, then you've got nothing to worry about.

K- I also intend to get myself out of this scrape an I don't care just ... I will get myself out of this scrape. How I get out of this scrape is gonna be ... I'm gonna get my hide out of here. I can tell ya this, that ah, buying these tickets, an how they were bought, is illegal.

G- Yea.

K- There's conspiracy ...

G- Yea..

K- Involved here. And that's where the trouble lies.

G- Well, the lawyer says no. I talked it over with him.

K- You better ...

G- Well, I'm just ...

K- I hope, I hope your lawyer is right.

G- Well ...

K- He said ... cause I think there's real problems.

G- (Unintelligible) ... real problems, don't worry me a bit. I know what I've done wrong an what I've done that isn't wrong. An to me, ah, as long as nobody lies an, an then they make somebody lie to try to get somebody immunity to make somebody lie, if somebody don't lie, I'm not in any problems because, ah, me ah, they can know everything that I've done an I'm not in any trouble. I mean like they was telling me, ah, this one is turning, is getting immunity an they're turning this one, ah, they told me that when I come down here twice that you had a tape recorder on, was taping our conversations. So that you could go back on give it to them, that they told ya that they'd give you immunity.

K- Huh, who told you this?

G- The people that I talk to that's from the DA's office ... I mean they tell me, huh, to me they was all wrong, so I don't believe that you'd do that. I think that I can say anything to you an I don't believe that you'd take an turn against me, that you'd wanna take an tape our conversations.

K- I can tell ya this, it isn't a matter of turning against anybody, it's a matter of when it comes to weighing you against my family. You don't weigh much.

G- No, of course not. But what can you tell them against me that's gonna hurt me? I want ya to tell them, tell them exactly the truth on everything.

K- That's exactly what I intend to do.

G- That's just what I want you to do, but I don't want ya to lie.

K- I won't, I promise you this, I lie about nothing.

G- All right.

K- I don't lie I will not lie.

- G- Tell them exactly what you know.
- K- I will tell them everything that I know ...
- G- Uh huh.
- K- Exactly the way it is.
- G- Uh huh, that's all right with me.
- K- Okay, as long as you know ...
- G- That's all right with me.
- K- That's the way it'll ...
- G- That's all right with me, because I can't see one thing that we've done wrong. If I can't tell you or what I like for horses, an if we can't bet on what we wanna bet, ah, to me it ain't a free country. To me we can bet a \$100,000 a night if we want to and if we win or if we lose, I mean it wasn't something we was betting on that we was just winning every night, that was something, ah ...
- K- Well, a little more than that ...
- G- Yea ...
- K- But, I can assure you that I intend to tell the truth an nothing but the damned truth.
- G- That's all I ...
- K- Cause I intend to, to clear my, my ...
- G- If that clears you, ah, your family, whoever it clears, be sure you're telling the truth, don't worry about me. You tell them the truth. You tell them the truth. Don't want ya, to, ah, there's no way that I want you to jeopardize yourself to, to try to help me. Anything that you wanna tell them that's the truth, you go ahead.
- K- Fine

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- G- But I'll just tell ya one thing, just watch out who you're doing business with an telling, cause they'll make you a million promises just to find out what you know, and then once they find out what you know, they tell you, look, you don't know nothing so we can't help ya, so just ...
- K- Well, I go back to what you say, it's nobodies gonna use me.
- G- No?
- K- No, because ...
- G- If you tell them ...
- K- No bodies gonna use me -
- G- All right, but here's what they'll do DAVE, here's how they use ya, they come in an they say you set down here an you tell us all this what you know, an then after you tell them what you know, everything you know, then they'll say to you, well you don't know enough for immunity. So then you've told them everything you know so, ah, they use it, in my estimation. If they'll give you immunity an then you'll tell them everything you know, go ahead. But I'll guarantee you that they've been twenty-five people that they've promised immunity, that's gone an told them everything. Everything from the start to the finish an they just looked at them an laughed. They say you know more about this, you know, ah, BILLY HOUGHTON (ph) an you know STANLEY DANCER (ph) an you fixed races. We want you to tell us about it. We want you to tell us that these horses was dead. DANCER said he wasn't gonna win with this horse and ABBATELLO (ph) was gonna stick ... that's what they want ya to tell them. So I mean, when they talk with these people, if they can't tell them that, an be truthful about it, then they say there's no immunity.
- K- Is CONNIE down there?

G-

She was down there today for a line up. For, ah, people from the OTB on, ah, they was looking, six women, they wanted to see if she was involved in cashing tickets. That's the first time she's been down there since, ah, about the second one. But she's never answered one question. She's never testified to one thing. And to me CONNIE, as I'm telling you right now, and I'll tell her the same thing, anything that she can tell them, anything that she can help herself with, go ahead and tell them. I don't want her to do one thing but tell the truth. The only time that you can get in trouble is when you lie, and if she knows something but she told her lawyer everything she knew and her lawyer told them everything she knew and they laughed at it, they said, we, they said we're not gonna give her immunity on this. So she bought tickets. So she cashed tickets. We don't wanna know that. We want her to say that she was there when that GILMOUR (ph) an INSKO (ph) and HOUGHTON (ph) was there and said, this race is fixed, we're not gonna win or we're gonna lose. Now how could she. She 'on't even know them. Never seen them. So I mean how was she gonna ... so they laughed at her. They wouldn't give her immunity. He told her, he told, she told her lawyer everything that had happened. And her lawyer told them, that even got her in trouble cause she even told them anything she'd done wrong. She'd cashed tickets under a phony name. And her lawyer told them that. They said to her, they said, ah, the lawyer said, ah, they said to her lawyer, what does she want immunity for? What has she done? He says all right I'll tell you what she's done, she's cashed tickets under a phony identification. They said all right we'll give her immunity. As long as she tells us what she knows. So she told the lawyer, exactly, so the lawyer told them. They laughed. They don't want that. So, so that's what I'm saying. Just be careful they don't do that with you. Because whatever you've done, say some little thing, they'll come back on you for it, because they won't give you immunity unless they think that you've done something that you, can lie. If you lie to them, if you go tell them that you've talked with STANLEY DANCER or you talked with CARMINE ABBATELLO (ph) and they was gonna (unintelligible) horses or you tell them that I told you there was fixed races or something, (unintelligible) ...

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- G- Because right now if they had anything they'd be arresting people in the morning. But the only thing...
- K- Maybe that morning's coming
- G- Sure. Allright. Well, to me they gotta have soemthing to prove it, they gotta have something to prove it, cause ...
- K- You're not playing with Boy Scouts, fella.
- G- I know who you're playing with DAVE, I know who you're playing with. But can they arrest you tonight for murdering the, the Pope? The first thing, the Pope is alive, so he ain't been murdered ...
- K- Well ... like I said before, you ... well you ... you got a pretty good way of thinking, but to me, ah, I ... (unintelligible)
- G- I'll talk to the lawyer, an what he tells me. And I told him exactly word for word everything that's happened.
- K- And, ah, they seize, they seize my papers and stuff and I can't move, and I get called down and why is this going on, why is this going on, I got to know why's.
- G- Why is what going on?
- K- Why do I have to get called down, why is my place a ... (unintelligible)
- G- I told ya why, they're just trying to bust your balls so that you will come an tell them something, so that you'll lie.
- K- I don't intend to lie!
- G- All, all right.
- K- I'm telling you now ...
- G- Yea
- K- That if I can find a way home, by saving my, my family, I, I will tell the truth ...

G- Yea, but, DAVE, see now ...

K- I don't have to make a deal, I can tell the truth.

G- That's right, but what I'm trying to tell you is, that they don't want ya to tell the truth. That number one, they want ya to lie, for one thing and another thing is if you had a lawyer that would, if you'd go over with him step by step an tell him what you have done an what you haven't done then he would know how to play it an what, how to contact them an what they could do. He would tell you what to testify to and what not to. But, ah, to me, why don't you go get with some other lawyer that, ah, that you know or that somebody else knows and talk it over with him an tell him what you've done. To me, you're just taking the negative attitude, attitude, you, I mean in other words they're looking for a murderer an you're trying to thing that you're, you're murdered somebody. That's the way I look at, ah, the way you think about it. To me I can't see anything ... there's only one thing, to me, in the whole thing that you've done wrong and that was having somebody cash the tickets. An, to me the lawyer, my lawyer told me today, he says that's a misdemeanor, the only way he can get in trouble is when he files his income tax in nineteen, in April 15, if you don't put down that you've won so much money and you've lost so much money, then they'll take an whoever else did cash the tickets, they'll come back an say that you defrauded them by saying that you didn't win that much money. Other than that he said you can get in no trouble. So, I mean, before April 15, that's the only time, to me, that you gotta look out for. If, if somebody'll stick up an say it was theirs or whether it was yours. Well ... did you, did you get the money out of the bank or what? *in private*

K- No! I didn't. They seized my bank account, my bank account is seized I told ya. It's closed. They took my books and my bank account. Because of your ... (unintelligible). Closed everything up on me.

G- Yea, but how the hell can they, ah ...

K- Don't ask me how ... don't sit there like ...

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- G- I don't know ...
- K- Some person you don't know an now you don't know
- G- No, I don't know what they can do about your bank account. What have you done, ah ...
- K- They can go to anybody's bank an nail ya. Not as long as business, what're you talking about, fella? You know, you're, you ...
- G- Even though it's known as Krafthill Farms?
- K- Who? What's the difference where it is? If you got anything where you, you got anything in the bank account?
- G- Sure I have ... of course ...
- K- They can snatch it ...
- G- Of course they can snatch it, of course they can, but they can't if I flooded the Krafthill Farms ... an the Dairy Hill Farms ...
- K- Yea, yea!
- G- Huh?
- K- (Unintelligible) ... you go fight it out, while they got everything locked up on ya.
- G- Yea, but if they're not gonna take an seize your son's bank account an one thing, an another, so something that they're after you for.
- K- They know the horses, where they know the names.
- G- Huh.
- K- Don't they?
- G- What?

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- K- They know the horses at Kraft Hill Farms.
- G- Yea
- K- They grabbed the Kraft Hill Farms books. Period.
- G- Did they ever ask you any questions about the horses.
- K- Of course they did. I told ya that. All right, this is it ...
- G- What'd you tell them?
- K- Well I told that the horses were in Kraft Hill Farms name.
- G- Yea.
- K- And that there was never a purchase made by our checks, because we have no records of it.
- G- Yea.
- K- Because they've got my books, I don't ...
- G- Did you tell them that you didn't purchase the horses?
- K- That's right.
- G- Well, I don't ^{think} you should do that
- K- You don't think I should do that? Why? Huh? Why? There no way for me to substantiate that. You've got books that say, where did ya buy that, where did ya buy anything. I'm trying to tell ya that an you say to me, you sit there, I told ya go get yourself a bar examination.
- G- God dammit, I know right then, if you'd a just said, I purchased the horses an I paid 21,000, there'd been no problem with it, there'd been no problem ...
- K- I told them, I told them the truth, I wasn't lying.
- G- Well, did your lawyer tell ya to answer ...

- K- That's right!
- G- Answer the question?
- K- That's right!
- G- Huh?
- K- Told me to answer that question, because my books ... the account ... (unintelligible) ... will be tied up until it's scrutinized. They've got a right to ... if they knew where your account is, they could (unintelligible) ... and don't say they can't.
- G- No, I know they can, but, but where yours wasn't connected to Kraft Hill Farms, they couldn't do it. Until you're telling them that you didn't even own the horses or anything. If you didn't, to me, you can take an get yourself in trouble an get your son in trouble, if you didn't purchase the horses, right?
- K- I don't get anybody in trouble if I tell the truth. If I lie about it I will get into trouble. Now you're reversing what you just told me!
- G- Yea, no, I mean, but, why did you take the, when the checks come in that the horses earned, an one thing an another, why did you sign ...
- K- Because ...
- G- if it ...
- K- (Unintelligible) ... you know why because it's a corporate structure. You either gotta put it in the bank or tear them up. What're you gonna do with them?
- G- Yea, I mean, that's ...
- K- Meantime, I can figure out what you can do with them. Maybe you can figure out what you're gonna do with them. That's what you gotta do.
- G- Now it's too late, to do anything with them. If I had the money, all the money that the horses earned ...

entire check for 10,000

- K- It's in the account, every ...
- G- Well, you told me, the other day on the telephone, that you didn't deposit the check until Friday
- K- That's right.
- G- Well, according to Franklin National Bank, the check cleared the day before that, on the 23rd, on Thursday.
- K- Well, I deposited it on Friday.
- G- I don't know how they would have cleared it the day before that.
I don't care what bank you check from now on, just tell me what the raceway's got down. The raceways got the check as clear. So that's all I know.
- K- So there's no way you can stop it.
- G- Huh?
- K- You can stop it, until it clears ... it'll stop the, ah, notions of any, ah, (unintelligible) ... Then you'll wait for me to put it in again. I've gotta go back down there again.
- G- (Unintelligible) ... another lawyer to listen, because you're starting, you're starting things that you couldn't get in any trouble over, that you did get in trouble over ...
- K- I'm telling the truth ...
GERRY, now what I don't want to lie about it. I feel I'm safer ...
- G- Whose horses was they?
- K- Whose horses was they?
- G- Yea.
- K- They weren't mine

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- G- Yea. Whose horses? Huh?
- K- They were yours!
- G- Oh, yea? I can't see how, I can't see how as you're gonna tell them that you got the checks, and signed the checks your son, I mean, who told him to sign the checks an put them in there?
- K- Oh, GERRY, you're really getting into it, you better go home now, because I'm gonna tell you something GERRY, I'm a little ... frozen, over this thing an I don't want to blow my ...
- G- Well I didn't do anything ... I didn't get 21,000 dollars.
- K- Oh, well there's where ... what you, you played with me about so let's ...
- G- What do you mean played with you about?
- K- Just, just go home now, while you you feeling pretty good.
- G- Well I'm feeling all right ...
- K- Just go home.
- G- Yea, but I'm feeling all right ...
- K- You, you used me pretty good.
- G- I used you?!
- K- Yes, you did an I saw some pretty nice pictures down there.
- G- Pictures! Of what DAVE? Now what pictures, I mean if you're betting an I'm betting an we're making money, what pictures? Now what can somebody tell you that, that's gonna change your mind about you was doing?
- K- I don't wanna tell ya.

- G- Well, I want ya to tell me.
- K- Nah.
- G- No, because you can't tell me that's why. Because you can't tell me. Well, to me, I can't understand why four or five days I been trying to get a hold of you, you wouldn't even call me back, an one thing an another. You're telling me I'll, I'll be there, I'll call you, an one thing an another, I mean to me ... you could've ...
- K- I, I ...
- G- You could be taken that money out of that account, long ago.
- K- I got my business to take care of, I can't afford to be losing the 21,000 or whatever it amounts to, whatever that money you're talking about...
- G- It's 21,000 ... an ELDON TURCOTTE (ph) that hasn't got his money ...
- K- Well then you pay him ...
- G- He's in for fifty-five percent.
- K- You're sitting on the millions, so you pay him.
- G- No, I'm not sitting a million.
- K- You're sitting on plenty, you pay him.
- G- Yea.
- K- You hired him, you pay him.
- G- What do you mean I hired him? Did I hire him? You got the money!
- K- I never saw that man until he came into this place, did I?

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G- You got the money didn't you?
K- I never seen ...
G- Who got the money?
K- Who got ...?
K- I collected the money.
G- Yea, that's right. So I mean, so that's his money.
Supposed to come out of that money.
K- Did I ever see him before he come here?
G- No. Not that I know of. You might have. I don't know.
K- No, I don't even know till I fell on him.
G- It doesn't make any difference. The money, the money
that came through came to you ...
K- You ...
G- Kept coming.
K- You'll get paid someday.
G- Who will?
K- You will
G- Yea
K- You pay him if he ... (unintelligible) get his money.
G- I ain't paying ... You gotta tell him ...
K- ...from there, so I ain't paying him. Well, you never
told me when the horses were ready to race an win?

- G- Who? I wasn't even watching them horses. I didn't care where they raced from the time that this investigation started I never even called the warm up (unintelligible) I was out of, well I wasn't even, I didn't care whether they raced or what, I wasn't gonna get anybody in any trouble. I ...
- K- I would say that ... that you told me ...
- G- What?
- K- When you, when you when these horses are ready, I'll bet them.
- G- That's right, but I was not even around when they raced.
- K- You've used everybody, come on GERRY!
- G- I've used everybody?
- K- Yea
- G- Did you make money
- K- I paid my debt to you ...
- G- Did you make money ...
- K- Even though I lost money with you, Gerry, I've got a record of every day with you!
- G- No, no, come on!
- K- And I paid my bill with you ...
- G- Come on!
- K- And I'll show you my records, come on!
- G- You made money and you know you made money.
- K- I made what?

NY 172-90

G- You made money ...

K- Come on you must be kidding ...

G- What? I'm not kid ...

K- I borrowed money in my bank to keep going with you,
you gotta be a shit, I'm not ...

G- Ah ...

K- You remember when I quit betting with you one week
before you ...

G- Yea.

K- This whole thing stopped" You know why I bet? Quit?
Because I make no money

G- Don't tell me you didn't make no money because when I was
down here on a Sunday, that Sunday there was \$10,000 on ...

K- What the hell is \$10,000 after what you been nailing up
there.

G- You kidding? What do you mean what I was nailing up there?

K- You got paid from everybody in the business.

G- Oh, come on!

K- There's fourteen people here when ...

G- Ah, a hundred DAVE, what's that got to do with you, if
you was making money? If I had a hundred people...

K- I wasn't making money.

G- Ah, if you wasn't making money, you still, you wouldn't
have been betting.

K- I quit! I quit didn't I? You left me in a hole with
that deal ...

172-90

G- Aw, aw -

K- And I got, I've got records to show ya.

G- I believe ...

K- Remember I've got records on that, on what we did,
 you an I.

G- Yea.

K- My records show that I'm in the hole.

G- I don't believe it.

K- You don't believe it?

G- No. Not on (unintelligible). I don't believe it.

K- And when the bank was broke, who put the money, fresh
 money in? You?

G- Yea, but then you took it back!

K- You ...

G- Then you took it back.

K- When, ah,

G- Whatever you put up, whatever you put up, you took back
 before you ...

K- Ah, but ...

G- Don't say you didn't ...

K- No chance!

G- Always, everytime.

K- No chance.

G- Well, I'm telling you everytime!

NY 172-90

K- No sir!

G- Everytime!

K- GERRY!

G- Yea.

K- Would you mind telling me, ah, what bank Krafthills things are in so I can get the lawyer to check to see if the account been attacked because I don't think ...

G- I ain't gonna tell you nothing!

K- No, well see that's why you won't ...
I don't wanta tell you nothing!

G- Well, in other words, in other words, I'm not gonna get the money that's coming to me.

K- You're not gonna get a dime until this thing is straightened out!

G- Well, if that's the way you feel.

K- Right!

G- All right.

K- Then I'll get the baggage or ...

G- Yea.

K- Or whatever you want.

G- All right.

I'll guarantee ya that I'll get the \$21,000 away from you. I mean, all I want, if it was coming to you ...

K- All right get out!

G- I'll teach you!

NY 172-90

K- Get out before I ... get out, get out!
G- I'll see that you get ...
K- Get out!
G- I'll see that you get ...
K- Get out! Go on.

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THE COURT'S CHARGE

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1 is no proof beyond a reasonable doubt that there should
2 be a verdict of acquittal and, so too, I think they
3 should be charged that if the evidence is there they
4 should be convicted.

5 THE COURT: Yes.

6 I'm going to take five minutes more, which I
7 don't like to do, but I think I'd better do it.

8 Don't go away. I will be right back.

9 (Recess taken.)

10 (The jury entered the jury box at 10:15 a.m.)

11 THE COURT: Ladies and gentlemen of the jury,
12 I'm going to give you a charge on the law.

13 I generally read the charge that I give to you.
14 I realize it is more difficult to follow, but on the
15 other hand it minimizes the possibility or the pro-
16 bability of error and I think you get a more accurate
17 instruction of the law.

18 So, I ask that you pay particular attention to
19 what is said and I'll try to read slowly so that you
20 will be able to understand.

21 It's going to take a little longer than usual,
22 perhaps, that way, but try to be as attentive as
23 possible.

24 Now that you have heard the evidence and the
25 argument, it becomes my duty to give the instructions

1 of the Court as to the law applicable to this case.

2 It is your duty as jurors to follow the law as
3 stated in the instructions of the Court, and to apply
4 the rules of law so given to the facts as you find them
5 from the evidence in the case.

6 You are not to single out one instruction alone
7 as stating the law, but must consider the instructions
8 as a whole.

9 Neither are you to be concerned with the wisdom
10 of any rule of law stated by the Court. Regardless
11 of any opinion you may have as to what the law ought
12 to be, it would be a violation of your sworn duty to
13 base a verdict upon any other view of the law than that
14 given in the instructions of the Court; just as it would
15 be a violation of your sworn duty, as judges of the
16 facts, to base a verdict upon anything but the evidence
17 in the case.

18 You are to perform your duty as jurors without
19 any sympathy or prejudice for or against any defendant.

20 You must not permit yourselves to be governed
21 by sympathy, bias, prejudice or any other considerations
22 not founded on the evidence and these instructions on
23 the law.

24 Justice through trial by jury must always depend
25 upon the willingness of each individual juror to seek

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2 the truth as to the facts from the same evidence
3 presented to all the jurors and to arrive at a verdict
4 by applying the same rules of law, as given in the
5 instructions of the Court.

6 You have been chosen and sworn as jurors in this
7 case to try the issues of fact presented by the allega-
8 tions of the indictment and the denial made by the
9 "Not guilty" plea of the accused. You are to perform
10 this duty without bias or prejudice as to any party.
11 Again, the law does not permit jurors to be governed
12 by sympathy, prejudice, or public opinion. Both the
13 accused and the public expect that you will carefully
14 and impartially consider all the evidence in the case,
15 follow the law as stated by the Court and reach a
16 just verdict, regardless of the consequences.

17 I am going to send the exhibits which have been
18 received in evidence with you as you retire for your
19 deliberations. Except for the transcripts of the tapes
20 which are not in evidence. If you wish any portion or
21 all of the tapes re-played or any part of the transcript
22 of any witness' testimony re-read, you should so advise
23 the Court. There are three tape dates: August 4,
24 August 19 and August 30.

25 (Continued on next page.)

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2 The law presumes a defendant to be innocent of
3 crime. Thus, a defendant, although accused, begins
4 the trial with a "clean slate" -- with no evidence
5 against him. And the law permits nothing but legal
6 evidence presented before the jury to be considered
7 in support of any charge against the accused, so the
8 presumption of innocence alone is sufficient to acquit
9 a defendant, unless the jurors are satisfied beyond a
10 reasonable doubt of the defendant's guilt after careful
11 and impartial consideration of all the evidence in the
12 case.

13 It is not required that the Government prove
14 guilt beyond all possible doubt. The test is one of
15 reasonable doubt. A reasonable doubt is a doubt based
16 upon reason and common sense -- the kind of doubt that
17 would make a reasonable person hesitate to act. Proof
18 beyond a reasonable doubt must, therefore, be proof of
19 such a convincing character that you would be willing
20 to rely and act upon it unhesitatingly in the most
21 important of your own affairs.

22 The jury will remember that a defendant is never
23 to be convicted on mere suspicion or conjecture.

24 A reasonable doubt does not mean a doubt arbitrar-
25 ily and capriciously asserted by a juror because of his
or her reluctance to perform an unpleasant task. It
does not mean a doubt arising from the natural sympathy

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2 which we all have for others. It is not necessary for
3 the Government to prove the guilt of the defendant
4 beyond all possible doubt. For if that were the rule,
5 very few people would ever be convicted. It is
6 practically impossible for a person to be absolutely
7 sure and convinced of any controverted fact which,
8 by its nature, is not susceptible of mathematical
9 certainty. In consequence, the laws say that a doubt
10 should be a reasonable doubt, not a possible doubt.

11 Again, reasonable doubt means a doubt suffi-
12 cient to cause a prudent person to hesitate to act in
13 the most important affairs of his or her life.

14 An indictment is but a formal method of accusing
15 a defendant of a crime. It is not evidence of any kind
16 against the accused.

17 There are two types of evidence from which a jury
18 may properly find a defendant guilty of a crime. One
19 is direct evidence -- such as the testimony of an eye-
20 witness. The other is circumstantial evidence -- the
21 proof of facts and circumstances which rationally imply
22 the existence or non-existence of other facts because

23 (Continued on next page.)
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2 such other facts usually follow according to the common
3 experience of mankind. Thus, the footprint of a man
4 in the sand implied to Robinson Crusoe that there was
5 another man with him on the desert island and indeed
6 there was, the man Friday.

7 Thus, on the one hand you may have direct evidence
8 of the issue and on the other hand you may have circum-
9 stantial evidence of the issue. The law does not hold
10 that one type of evidence is necessarily of better qual-
11 ity than the other. The law requires only that the
12 Government prove its case beyond a reasonable doubt both
13 on the direct and circumstantial evidence. At times
14 the jury might feel that circumstantial evidence is of
15 better quality. At other times they may feel direct
16 evidence is of better quality. That judgment is left
17 entirely to you.

18 As a general rule, the law makes no distinction
19 between direct and circumstantial evidence, but simply
20 requires that, before convicting a defendant, the jury
21 be satisfied of the defendant's guilt beyond a reasonable
22 doubt from all the evidence in the case.

23 Count one of the Indictment charges that on or
24 about September 14, 1973, in the Eastern District of
25 New York, the Grand Jury duly impaneled and sworn in
this Court was conducting an inquiry to determine among

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2 other things whether, in connection with the case of
3 United States v. John Doe, there had been committed in
4 this District violations of Title 18, U.S.C., 224,
5 (Sports Bribery), and other Federal criminal statutes,
6 said inquiry being a case in which a law of the United
7 States authorized an Oath to be administered. Such Code
8 further alleges that it was material to this Grand Jury
9 in further ascertaining, among other things:

10 A. Whether or not there was any business rela-
11 tionship between the defendant Eldon Turcotte and the
12 defendant Forrest Gerry, Jr.

13 B. Whether or not Forrest Gerry, Jr. was the
14 real and actual owner or part owner of horses listed in
15 other persons' names.

16 C. Whether or not Eldon Turcotte was the real
17 and actual owner or part owner of horses listed in other
18 persons names.

19 Such Count further alleges that on or about Sep-
20 tember 14, 1973, the defendant Eldon Turcotte, having
21 duly taken an Oath before the said Grand Jury that, as
22 a witness before said Grand Jury, he would testify truly,
23 did then and there, wilfully and contrary to such Oath,
24 state material matter which he did not believe to be
25 true and knew to be false, to wit:

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2 "Question: Let me ask you this: With particular
3 horses, how would you be involved with them as an owner,
4 as a trainer, as a driver? Is there anything else that
5 I'm leaving out because I am not familiar with racing
6 myself?

7 "Answer: No.

8 "Question: Let me ask you with all three, as an
9 owner, as a trainer, as a driver, for any horses that
10 you were an owner of, that you drive or that you are a
11 trainer of, is Forrest Gerry the real owner of those
12 horses?

13 "Answer: No.

14 "Question: Do you know anything about Forrest's
15 hidden ownership of horses, the fact that he owns horses
16 that are listed in other people's names?

17 "Answer: No."

18 "Question: Mr. Turcotte, have you driven any
19 horses within the last nine months that you know have
20 belonged to Forrest Gerry?

21 "Answer: That I knew belonged to Forrest Gerry?

22 "Question: Yes.

23 "Answer: No. I raced horses for a Mr. Kraft
24 Hill Farms that I was under the impression and believe
25 they belong to Kraft Hill Farms. From my understanding,
just rumors going around, I don't know if there's any

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2 truth to it that Forrest Gerry was the agent on these
3 horses, that they were bought by him for Kraft Hill
4 Farms. The horses were sent to me registered for Kraft
5 Hill Farms. The money that these horses earned was sent
6 to Kraft Hill Farms. The claim check, when it was
7 claimed, went to Kraft Hill Farms, and Krfat Hill Farms,
8 as far as I'm concerned, still owes me the money. Now,
9 as far as Forrest Gerry owning the horses, not to my
10 knowledge.

11 "Question: Kraft Hill Farms, who would be the
12 owner there?

13 "Answer: I think it's two boys. They're sons
14 of Dave Kraft."

15 All in violation of Title 18, United States Code,
16 Section 1623.

17 Said Section 1623 reads in pertinent part that:

18 "Whoever under Oath in any proceeding before or
19 ancillary to any . . . Grand Jury of the United States
20 knowingly makes any false material declaration" shall
21 be in violation of the law.

22 The essential elements of the crime are as follows"

23 1. That the testimony was given under Oath in a
24 proceeding before a Grand Jury duly impaneled and Sworn
25 in this Court.

2. That the testimony so given was false in one or more of the respects charged, and

3. That the false testimony was wilfully made as to facts material to the proceeding.

The materiality of the matter involved in the alleged false testimony is not a matter with which you are concerned but rather is a question for the Court to decide. You are instructed that the questions asked of the accused before the Grand Jury, as alleged in the Indictment, constituted material matter in this proceeding.

As to the first element of the crime, the Federal Rules provide with respect to the Grand Jury that the Foreman shall have the power to administer Oaths and Affirmations and sign all Indictments. You heard the Grand Jury Foreman testify. If you are satisfied that he did in fact administer an Oath to Mr. Turcotte as he testified, then you may find that the first element has been established.

With respect to the second element, that the testimony so given was false in one or more respects, that is something for you to determine.

As to the third element, you have to determine whether or not the defendant Turcotte knew that the testi-

Charge of the Court

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2 money he gave was false at the time he gave it, and that
3 involves a question of his state of mind. The question
4 of his state of mind is an issue to be found by the
5 jury. It is hard to determine from direct testimony,
6 but it can be inferred from things the defendant says
7 or does. As a practical matter, it is almost impossible
8 to prove the workings of a defendant's mind when he
9 testified before the Grand Jury, but in appropriate cir-
10 cumstances, as here, you may infer a belief in the
11 falsity by proof of the falsity itself, if you have
12 found this falsity to have been so proved beyond a
13 reasonable doubt.

14 You don't have to make such inference, but if
15 you find the testimony was false when given before the
16 Grand Jury, you may find the third element, that the
17 testimony, if you decide it was given falsely, was given
18 knowingly and wilfully.

19 As stated before, the burden is always upon the
20 prosecution to prove beyond a reasonable doubt every
21 essential element of the crime charged.

22 In considering the Count of the Indictment charging
23 the defendant Turcotte with the crime of perjury, I charge
24 you that it shall be a defense to the charge of perjury
25 if the defendant, at the time he made the declarations

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2 alleged to be false, believed said declarations were
3 true. If, after hearing all of the testimony, you have
4 a reasonable doubt in your mind as to whether or not the
5 defendant, Eldon Turcotte, believed the declarations
6 made by him were true, then you must resolve that doubt
7 in his favor and find him Not Guilty of the crime of
8 Perjury.

9 Count Two of the Indictment charges that from on
10 or about the 21st day of May, 1973, to on or about
11 August 30, 1973, within the District of New Jersey, the
12 defendant Forrest Gerry, Jr., and the defendant Eldon
13 Turcotte, did corruptly endeavor to influence, obstruct
14 and impede the due administration of justice in the
15 United States District Court for this District by endeavoring
16 to influence David Kraft, a witness before a Grand
17 Jury of the Court investigating possible violations of
18 the Sports Bribery Law, 18 U.S.C., Section 224, to give
19 false testimony before the said Grand Jury in relation
20 to the aforesaid violation, all in violation of Title 18,
21 United States Code, Section 1503, and Title 18, United
22 States Code, Section 2.

23 Section 1503 provides in pertinent part that:

24 "Whoever corruptly, or by threats or force . . .
25 influences, obstructs, or impedes, or endeavors to influ-

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2 ence, obstruct, or impede the due administration of
3 justice," shall be in violation of the law.

4 The essential elements of this crime are as
5 follows:

6 1. That the defendants influenced, obstructed or
7 impeded or endeavored to influence, obstruct or impede
8 the due administration of justice, i.e., the Grand Jury
9 investigation.

10 2. That the due administration of Federal justice,
11 i.e., the Grand Jury investigation, was the object of
12 the defendants' acts.

13 3. The defendants acted corruptly.

14 As to the first element of the crime, any conduct
15 that is capable of producing an effect which prevents
16 justice from being duly administered is considered to
17 be such an influence or obstruction.

18 If you find that the acts of the defendants were
19 such that they could interfere or did influence the
20 testimony that they expected Kraft might give, then you
21 can find that this element is satisfied.

22 Moreover, it is not necessary for the crime of
23 endeavoring to influence to find that the Grand Jury
24 investigation was actually impeded or obstructed, or
25 that Mr. Kraft actually committed perjury on his subsequent

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2 appearances before the Grand Jury. The crime is in the
3 attempt or the endeavor.

4 The second element you must find is that it was
5 the due administration of Federal justice which was the
6 object of the defendant's acts.

7 The performance of its function by a duly impan-
8 eled Grand Jury comes within the meaning of the term
9 administration of justice.

10 There was reference to the fact that Mr. Kraft
11 was going to talk to the FBI as well as to the Grand
12 Jury. However, the Indictment charges that there was an
13 attempt to influence David Kraft to give false testimony
14 before the Grand Jury, and you don't consider what they
15 might have wanted him to do with reference to the FBI
16 unless there was some indication that there was an
17 intent to affect his testimony before the Grand Jury.

18 If the intent was to affect Mr. Kraft's testimony
19 before the New Jersey Harness Commission, that is not
20 within the purpose of this, the scope of this Indict-
21 ment.

22 The third element you must find is that the
23 defendants acted corruptly.

24 With respect to the word "corruptly," in the
25 third element -- any endeavor to impede and obstruct

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2 the due administration of justice in the manner speci-
3 fied in the indictment is corrupt.

4 Again, the burden is always upon the prosecution
5 to prove beyond a reasonable doubt every essential
6 element of the crime charged.

7 You Will recall that I have made reference in
8 the Indictment to Section 2 of Title 18 of the United
9 States Code. Still on Count 2 of the indictment:

10 "Whoever commits an offense against the United
11 States, or aids, abets, counsels, commands, induces or
12 procures its commission is punishable as a principal.

13 "Whoever wilfully causes an act to be done, which
14 if directly performed by him or another would be an offense
15 against the United States, is punishable as a principal."

16 The guilt of a defendant may be established without
17 proof that the accused personally did every act constitut-

18 (Continued on next page.)
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ing the offense charged.

In other words, every person who willfully participates in the commission of a crime may be found guilty of that offense. Participation is willful if done voluntarily and intentionally, and with a specific intent to do something the law forbids, or with a specific intent to further do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a crime, it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seeks by some act or omission of his to make the criminal venture succeed.

An act or omission is "willfully" done if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You, of course, may not find the defendant guilty unless you find beyond a reasonable doubt that every

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2 element of the offense as defined in these instructions
3 was committed by some person or persons, and that the
4 defendant participated in its commission.

5 Count Three of the Indictment charges that from
6 on or about May 21, 1973, to on or about September 14,
7 1973, within the Eastern District of New York, and the
8 District of New Jersey, the defendant Forrest Gerry, Jr.
9 and the defendant Eldon Turcotte willfully and knowing
10 did combine, conspire, confederate and agree together
11 and with each other to commit the following offenses
12 against the United States:

13 1. To willfully and knowingly endeavor to influ-
14 ence, obstruct and impede the due administration of jus-
15 tice in this Court by endeavoring to influence David
16 Kraft, a witness before a Grand Jury of this Court in-
17 vestigating possible violations of the Sports Bribery Law,
18 18 U.S.C., Section 224, to give false testimony before
19 said Grand Jury in relation to the aforesaid violation
20 of 18 U.S.C. Sections 1503 and 2.

21 2. To procure Eldon Turcotte to commit perjury,
22 an offense against the United States in violation of
23 18 U.S.C., Section 1622.

24 In furtherance of the Conspiracy and to effect
25 the objects thereof, the defendants performed the follow-

ing overt acts:

1. On or about August 4, 1974, Forrest Gerry, Jr. met with David Kraft at Kraft Hill Farms, Farmingdale, New Jersey.

2. On or about August 19, 1973, Forrest Gerry, Jr. and Eldon Turcotte met with David Kraft at Kraft Hill Farms, Farmingdale, New Jersey.

3. On or about August 30, 1973, Forrest Gerry met with David Kraft of Kraft Hill Farms, Farmingdale, New Jersey.

4. On or about September 14, 1973, Eldon Turcotte testified as a witness before the Special May, 1972 Grand Jury in the Eastern District of New York, all in violation of Title 18, United States Code, Section 371.

Said Section 371 provides in pertinent part that:

"If two or more persons conspire . . . to commit any offense against the United States, . . . and one or more of such persons do any act to effect the object of the conspiracy, each" is guilty of an offense against the United States.

Four essential elements are required to be proved in order to establish the offense of Conspiracy charged in the indictment:

1. That the Conspiracy described in the Indict-

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1 ment was willfully formed and was existing at or about
2 the time alleged;

3 2. That the accused willfully became a member
4 of the Conspiracy.

5 3. That one of the conspirators thereafter,
6 knowingly committed at least one of the overt acts
7 charged in the Indictment at or about the time and
8 place alleged, and

9 4. That such overt act was knowingly done in
10 furtherance of some object or purpose of the Conspiracy
11 as charged.

12 If the jury should find beyond a reasonable
13 doubt from the evidence of the case that existence of
14 the Conspiracy charged in the Indictment has been proved,
15 and that during the existence of the Conspiracy one of
16 the overt acts alleged was knowingly done by one or more
17 of the conspirators in furtherance of some object or
18 purpose of the Conspiracy, namely the obstruction of
19 justice, then proof of the Conspiracy offense charged
20 is complete, and it is complete as to every person found
21 by the jury to have been willfully a member of the Con-
22 spiracy at the time the overt act was committed, regard-
23 less of which of the Conspirators did the overt act.

24 As stated before, the burden is always on the
25 prosecution to prove beyond a reasonable doubt every

essential element of the crime charged.

A Conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose. So, a Conspiracy is a kind of "partnership in criminal purposes," in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey, or to disregard, the law.

Mere similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a Conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished.

What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a Conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a

common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the Indictment were agreed upon to carry out the alleged Conspiracy; nor that all means or methods, which were agreed upon were actually used or put into operation; nor that all of the persons charged to have been members of the alleged Conspiracy were such. What the evidence in the case must establish beyond a reasonable doubt is that the alleged Conspiracy was knowingly formed, and that one or more of the means or methods described in the Indictment were agreed upon to be used, in an effort to accomplish some object or purpose of the Conspiracy, as charged in the Indictment; and that two or more persons, including one of the accused, were knowingly members of the Conspiracy, as charged in the Indictment.

In your consideration of the evidence in the case as to the offense of Conspiracy charge, you should first determine whether or not the Conspiracy existed, as alleged in the Indictment. If you conclude that the Conspiracy did exist, you should next determine whether or not each of the accused wilfully became a member of the Conspiracy.

If it appears beyond a reasonable doubt from the

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2 evidence in the case that the Conspiracy alleged in the
3 Indictment was willfully formed, and that a defendant
4 lawfully became a member of the Conspiracy either at
5 its inception or afterwards, and that thereafter one
6 or more of the Conspirators committed one or more overt
7 acts in furtherance of some object or purpose of the
8 Conspiracy, then there may be a conviction, even though
9 the Conspirators may not have succeeded in accomplish-
10 ing their common object or purpose, and in fact may have
11 failed so doing.

12 The extent of any defendant's participation, more-
13 over, is not determinative of his guilt or innocence.
14 A defendant may be convicted as a Conspirator even though
15 he may have played only a minor part in the Conspiracy.

16 An "overt act" is an act knowingly committed by
17 one of the Conspirators, in an effort to effect or ac-
18 complish some object or purpose of the Conspiracy. The
19 overt act need not be criminal in nature, if considered
20 separately and apart from the Conspiracy. It may as in-
21 nocent as the act of a man walking across the street,
22 or driving an automobile, or using a telephone. It must,
23 however, be an act which follows and tends toward accom-
24 plishment of the plan or scheme, it must be knowingly
25 done in furtherance of some object or purpose of the

Conspiracy charged in the Indictment.

One may become a member of the Conspiracy without full knowledge of all the details of the Conspiracy. On the other hand, a person who has no knowledge of a Conspiracy, but happens to act in a way which furthers some object or purpose of the Conspiracy, does not thereby become a Conspirator.

Before the jury may find the defendants or any other person has become a member of the Conspiracy, the evidence in the case must show beyond a reasonable doubt that the Conspiracy was knowingly formed and that the defendants or other person who is claimed to have been a member, willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the Conspiracy.

(continued on next page.)

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Charge of the Court

To act or participate willfully means to act or participate voluntarily or intentionally, and with specific intent to do something the law forbids; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So, if a defendant or any other person, with understanding of the unlawful character of the plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant, a conspirator.

One who willfully joins in an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, the Jury should consider the actions and the declarations of all the alleged participants. However, in determining whether the defendant was a member of a conspiracy, if any, the Jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of its members.

Whenever it appears beyond a reasonable doubt

Charge of the Court

from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly done, by any person likewise found to be a member, may be considered by the Jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts made may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuancy of such conspiracy, and in furtherance of some object or purpose of the conspiracy. Otherwise, any admission or incriminatory statement made or act done outside of Court, by one person, may not be considered as evidence against any person who was not present and did not hear the statement made or see the act done.

Thereafter, statements of any conspirator, which are not in furtherance of the conspiracy, or made before its existence, or after its termination, may be considered as evidence only against the person making it.

The indictment charges a conspiracy among the defendants, Turcotte and Gerry, both of whom are named in the indictment as co-conspirators. A person cannot conspire with himself and therefore you cannot find

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either defendant guilty unless you find beyond a reasonable doubt that he participated in the conspiracy as charged with the other defendant.

Now, with respect to the second count of the indictment, attempted obstruction of justice and the third count of the indictment, conspiracy as aforesaid, there are two parts to the Government's charge as to attempt to obstruct justice and conspiracy to attempt to obstruct justice, the first pertaining to the ownership of horses and the second pertaining to the conspiracy to fix races. With respect to the first of such parts pertaining to the ownership of horses, the Government points to the conversation between Turcotte, Gerry and Kraft on August 19, 1973 and certain other evidence in the case. If you find the elements of one or the other or both of the charges proved beyond a reasonable doubt as to such parts as to a defendant or both of them, then you must convict such defendant or both of them, as the case may be, on the count or counts so proved; otherwise, in each case you must acquit.

As to the second of such parts pertaining to the conspiracy to fix races, the Government points to certain conversations between Gerry and Kraft at which Turcotte was not present, including part of the

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2 conversation on August 19. You may not hold any of
3 such conversations held outside of the presence of
4 Turcotte against him and if you find the attempt to
5 obstruct justice and the conspiracy to obstruct justice
6 were based solely on a conspiracy to fix races, as
7 distinguished from the ownership of the horses, then you
8 must acquit the defendant Turcotte and determine the
9 second and third counts solely against Gerry.

10 Now, as part of each count of the indictment
11 there is the question of intent on the part of each
12 defendant.

13 Intent ordinarily may not be proved directly,
14 because there is no way of fathoming or scrutinizing
15 the operations of the human mind. But you may infer
16 the defendant's intent from the surrounding circumstances.
17 You may consider any statement made and done or omitted
18 by the defendant, and all other facts and circumstances
19 in evidence which indicate his state of mind. It is
20 ordinarily reasonable to infer that a person intends
21 the natural and probable consequences of acts knowingly
22 done or knowingly omitted.

23 Now, the word "knowingly" is used in the counts
24 in the indictment.

25 An act is done "knowingly" if done voluntarily

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and intentionally, and not because of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

As stated before, with respect to an offense such as charged in this case, specific intent must be proved beyond a reasonable doubt before there can be a conviction.

An act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of

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2 who may have produced them, and all facts which may
3 have been admitted or stipulated, and all facts and
4 events which may have been judicially noticed, and all
5 applicable presumptions stated in these instructions.

6
7 Any evidence as to which an objection was
8 sustained by the Court and any evidence ordered stricken
9 by the Court must be entirely disregarded.

10 Evidence does include, however, what is brought
11 out from witnesses on cross-examination as well as what
12 is testified to on direct examination.

13 Unless you are otherwise instructed, anything
14 you may have seen or heard outside the Courtroom is not
15 evidence, and must be entirely disregarded.

16 You are to consider only the evidence in the
17 case and your verdict is to be based on the evidence
18 only. But in your consideration of the evidence, you
19 are not limited to the bald statements of the
20 witnesses. In other words, you are not limited solely
21 to what you see and hear as the witnesses testify. You
22 are permitted to draw, from facts which you find have
23 been proved, such reasonable inferences as you feel are
24 justified in the light of experience.

25 Inferences are deductions or conclusions which
reason and common sense lead the Jury to draw from facts

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Charge of the Court

7 2 which have been established by the evidence in the case.

3 If a lawyer asks a witness a question which
4 contains an assertion of fact you may not consider the
5 assertion as evidence of that fact. The lawyer's
6 statements are not evidence.

7 You, as jurors, are the sole judges of the
8 credibility of the witnesses and the weight their
9 testimony deserves.

10 You should carefully scrutinize all the testimony
11 given, the circumstances under which each witness has
12 testified, and every matter in evidence which tends to
13 show whether a witness is worthy of belief. Consider
14 each witness' intelligence, motive and state of mind,
15 and demeanor and manner while on the stand. Consider
16 the witness' ability to observe the matters as to which
17 he has testified and whether he impresses you as having
18 an accurate recollection of these matters. Consider
19 also any relation each witness may bear to either side
20 of the case, the manner in which each witness might be
21 affected by the verdict, and the extent to which, if at
22 all, each witness is either supported or contradicted
23 by other evidence in the case.

24 Inconsistencies or discrepancies in the testimony
25 of a witness, or between the testimony of different

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8 2 witnesses, may or may not cause the Jury to discredit
3 such testimony. Two or more persons witnessing an
4 incident or a transaction may see or hear it differently
5 and innocent misrecollection, like failure of
6 recollection, is not an uncommon experience.

7 In weighing the effect of a discrepancy, always
8 consider whether it pertains to a matter of importance
9 or an unimportant detail, and whether the discrepancy
10 results from innocent error or intentional falsehood.
11 On the one hand you have direct evidence of the issue
12 and on the other hand you may have circumstantial
13 evidence of the issue. The law does not hold that one
14 type of evidence is necessarily of better quality than
15 the other. The law requires only that the Government
16 prove its case beyond a reasonable doubt both on the
17 direct and circumstantial evidence. At times the Jury
18 might feel the circumstantial evidence is of better
19 quality. At other times they may feel direct evidence
20 is of better quality. That judgment is left entirely
21 to you.

22 After making your own judgment, you will give
23 the testimony of each witness such credibility, if any,
24 as you may think it deserves.

25 The testimony of a witness may be discredited or

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Charge of the Court

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2 impeached by showing that he previously made statements
3 which are inconsistent with his present testimony. The
4 earlier contradictory statements are admissible only
5 to impeach the credibility of the witness, and not to
6 establish the truth of these statements. It is the
7 province of the Jury to determine the credibility, if
8 any, to be given the testimony of a witness who has
9 been impeached.

10 If a witness is shown knowingly to have testified
11 falsely concerning any material matter, you have a
12 right to distrust such witness' testimony in other
13 particulars and you may reject all the testimony of
14 that witness or give it such credibility as you may
15 think it deserves.

16 An act or omission is "knowingly" done, if done
17 voluntarily and intentionally and not because of mistake
18 or accident or other innocent reason.

19 The testimony of a witness may be discredited or
20 impeached by showing that the witness has been convicted
21 of a felony, that is, of a crime punishable by
22 imprisonment for a term of years. Prior conviction does
23 not render a witness incompetent to testify, but is
24 merely a circumstance which you may consider in determining
25 the credibility of the witness. It is the province of

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the Jury to determine the weight to be given to any
prior conviction as impeachment.

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2 A defendant who wishes to testify, is a compe-
3 tent witness and the defendant's testimony is to be
4 judge in the same way as that of any other witness.

5 The law does not compel a defendant in a
6 criminal case to take the witness stand and testify
7 and no presumption of guilt may be raised and no
8 inference of any kind may be drawn from the failure
9 of a defendant to testify.

10 As stated before, the law never imposes upon
11 a defendant in a criminal case the burden or the
12 duty of calling any witnesses or producing any
13 evidence.

14 It is the duty of the attorney on each side of
15 the case to object when the other side offers testi-
16 mony or other evidence which the attorney believes is not
17 properly admissible. You should not show prejudice
18 against any attorney or his client because the attorney
19 has made objections.

20 Upon allowing testimony or other evidence to
21 be introduced over the objection of an attorney, the
22 Court does not, unless expressly stated, indicate any
23 opinion as to the weight or effect of such evidence.
24 As stated before, the jurors are the sole judges of
25 the credibility of all the witnesses and the weight

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2 and effect of all evidence.

3 When the Court has sustained an objection to
4 a question addressed to a witness the jury must
5 disregard the question entirely, and may draw no
6 inference from the wording of it, or speculate as to
7 what the witness would have said if he had been
8 permitted to answer any question.

9 During this trial certain objections were made
10 by defense counsel as well as the United States
11 Attorney. Some objections were sustained and some
12 objections were overruled. You are not to concern
13 yourselves in the slightest degree with the rulings
14 the Court has made and the rulings should not enter
15 your deliberations at all while you deliberate on
16 this case. You are not to be influenced in the
17 slightest degree by the Court's rulings.

18 The Court has no opinion one way or the other
19 as to the innocence or guilt as to either of the
20 defendants. If by chance, by reason of what the
21 Court has said in its rulings, you may have gotten
22 an impression that the Court has an opinion in this
23 case, I say to you, you are to eliminate entirely
24 from your mind anything the Court might have said to
25 any counsel or witness or the manner in which the

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2 Court said it because it has no place in your
3 deliberations.

4 You are here to determine the guilt or
5 innocence of the two defendants from the evidence in
6 the case. You are not called upon to return a verdict
7 as to the guilt or innocence of any other person or
8 persons. So, if the evidence in the case convinces
9 you beyond a reasonable doubt of the guilt of the
10 accused, you should so find, even though you may believe
11 one or more other persons are guilty. But if any
12 reasonable doubt remains in your minds after impartial
13 consideration of all the evidence in the case, of
14 course, it is your duty to find the accused not
15 guilty.

16 The verdict must represent the considered
17 judgment of each juror. In order to return a verdict,
18 it is necessary that each juror agree thereto and
19 your verdict must be unanimous.

20 It is your duty, as jurors, to consult with
21 one another, and to deliberate with a view to reaching
22 an agreement, if you can do so without violence to
23 individual judgment.

24 Each of you must decide the case for himself
25 or herself, but do so only after an impartial

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2 consideration of the evidence in the case with your
3 fellow jurors. In the course of your deliberations
4 do not hesitate to re-examine your own views, and
5 change your opinion, if convinced it is erroneous.
6 But do not surrender your honest conviction as to the
7 weight or effect of evidence, solely because of the
8 opinion of your fellow jurors or for the mere purpose
9 of returning a verdict.

10 If any reference by the Court or by counsel to
11 matters of evidence does not coincide with your own
12 recollection, it is your recollection which should
13 control during your deliberations.

14 The punishment provided by law for the offenses
15 charged in the indictment is a matter exclusively
16 within the province of the Court and should never
17 be considered by the jury in any way in arriving at
18 an impartial verdict as to the guilt or innocence
19 of the accused.

20 Upon retiring to the jury room the gentleman
21 seated nearest me in the front row, Juror No. 1, will
22 act as Foreman unless he chooses not to do so, in
23 which case, you will elect another person as foreman.
24 The Foreman will preside over your deliberations and
25 be your spokesman here in court.

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Remember at all times, you are not partisans. You are judges, judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good common sense, consider the evidence in the case for only those purposes for which it has been admitted and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond reasonable doubt, say so. If either of them be not so proved, guilty beyond a reasonable doubt, say so.

You must render a verdict with respect to each of the three counts of the indictment. The first pertains only to the defendant Turcotte. Under the second and third counts you must return a verdict as to each of the defendants Turcotte and Gerry, separately.

If it becomes necessary during your delibera-

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2 tions to communicate with the Court, you may send a
3 note by a Deputy Marshal signed by your Foreman or
4 by one or more members of the jury. No member of
5 the jury should ever attempt to communicate with the
6 Court by any means other than a signed writing and the
7 Court will never communicate with any member of the
8 jury on any subject touching the merits of the case,
9 otherwise than in writing, or orally, here in open
10 court.

11 You will note from the oath which will be
12 given shortly to the Deputy Marshals that they, too,
13 as well as all other persons, are forbidden to
14 communicate in any way or manner with any member of
15 the jury on any subject touching the merits of the
16 case.

17 Bear in mind also that you are never to reveal
18 to any person -- not even to the Court -- how the
19 jury stands, numerically or otherwise on the question
20 of the guilt or innocence of the accused until after
21 you have reached a unanimous verdict.

22 Finally, your oath sums up your duty:

23 Without fear or favor to any man, you will well
24 and truly try the issues between the parties according
25 to the evidence given to you in court and the laws

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2 of the United States.

3 Now, ladies and gentlemen, I am going to send
4 you out to the jury room for, hopefully, only a few
5 minutes, during which initial period of time I will
6 ask you not to discuss the case nor begin your delibera-
7 tions. Talk about something else and do not talk
8 about the case at all until the case is fully submitted
9 to you.

10 I want to discuss certain matters with counsel
11 and then we will have a final short chat and then
12 you will begin your deliberations.

13 (Jury excused at 11:15 a.m.)

14 THE COURT: All right, gentlemen.

15 MR. CASTELLANO: I have no exceptions to your
16 charge nor do I have any further requests to make.

17 THE COURT: Mr. Bobick?

18 MR. BOBICK: Your Honor, I except to the entire
19 charge as being unfair to the defendant Garry on the
20 basis of the fact that the instructions of law given
21 to the jury were improper and I also say, your Honor,
22 that I object to that part of the charge where the
23 Court said that the testimony of Mr. Wilkinson or
24 the testimony of the Foreman is sufficient to prove
25 that the Grand Jury was properly empowered.

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(The jury entered the jury box at 4:20 P.M.)

THE COURT: Now ladies and gentlemen, to begin with, I didn't advise you but I will now advise you that since one of the attorneys has a dental problem that he has to take care of the latter part of this afternoon, we are going to have to adjourn at 5:00 o'clock and resume tomorrow for further deliberation.

I know you'd all like to get this over with but I don't see how it is possible with the playing of the tapes and what have you that we have to do and I apologize to you, Mr. Foreman, because I realize it is part of your vacation but it just cannot be helped.

Mr. Foreman, in that connection, I have your request for various packs of cigarettes and I don't think it is necessary in the light of what we have here so if you will re-distribute the money that the marshal just handed you I think that problem will be solved.

We will re-play the tapes first thing tomorrow and if we can resolve the other part of the problem this evening, we will meet here at 9:30 tomorrow morning. Try to be as prompt as possible. I have motions and calendar practice tomorrow and what I'll do is post a notice on the door outside the courtroom and tell all those lawyers to go to that courtroom and when I'm through with that I'll run in here and then you can start deliberating the

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1 rest of the case. So, 9:30 or 9:15, if you are all here
2 is when we can get the tape played and then we will go
3 on with your deliberations and I will do my best to be
4 as available as possible tomorrow and will sit, if
5 necessary, late tomorrow to wind up this matter, if it
6 becomes necessary.

7 Now, the other request you asked for, is a
8 clarification on the two charges of count 3.

9 Now, you have the indictment inside and I take
10 it you have read the indictment and count 3 has two
11 paragraphs stated in it. Is that what you want clari-
12 fied -- the count itself?

13 I take it you don't want me to read all the
14 general instructions I gave you on the question of
15 conspiracy.

16 I will re-read the four essential elements
17 required to be proved in order to establish the offense
18 of conspiracy to make sure that is in your mind and
19 I'll also read, slowly, to you, the two separate
20 paragraphs and then I'll try to explain to you as best
21 I can, what it means.

22 Count 3 is the indictment charges that on or
23 about the 21st day of May 1973 to on or about the 14th
24 day of September 1973, both dates being approximate
25 and inclusive, within the Eastern District of New York

A239

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and the District of New Jersey, the defendant Forrest
Gerry Jr. and the defendant Elden Turcotte willfully
and knowingly did combine, conspire, confederate and
agree together and with each other to commit the
following offenses against the United States:

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1. To willfully and knowingly endeavor to
influence, obstruct and impede the due administration
of justice in the United States District Court for the
Eastern District of New York by endeavoring to influence
David Kraft, a witness, before a grand jury of the
Eastern District of New York investigating possible
violations of the sports bribery law, Title 18, United
States Code, Section 224, to give false testimony before
said grand jury in relation to the aforesaid violation,
in violation of Title 18, United States Code,
Section 1503 and 2.

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If you recall, Section 1503 is the statute that
provides that whoever corruptly, or by threats or
force, influences, obstructs or impedes the due admin-
istration of justice shall be in violation of the law
and Section 2 is the aiding and abetting section that
I read to you in the charge so that that provision
says that the two defendants conspired to willfully
and knowingly endeavor to influence, obstruct and
impede the due administration of justice in this

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2 Court by endeavoring to influence David Kraft, a
3 witness before a grand jury of this Court investigating
4 possible violations of the sports bribery law, to give
5 false testimony before said grand jury in relation to
6 the violation of the obstruction of justice statute.

7 Now, the Government takes the position, as I
8 explained to you later on, that both with respect to
9 count 2, the attempted obstruction of justice count
10 and the third count that you have asked for, the
11 conspiracy count, that there are two parts to the
12 Government's charge under both those counts and there
13 are alternative parts.

14 The first pertains to the ownership of the
15 horses and the second pertains to the attempt to
16 obstruct justice in connection with a conspiracy to
17 fix races.

18 Let me make it abundantly clear that neither
19 the defendant Gerry nor the defendant Turcotte is on
20 trial here for any crime of fixing or conspiring to
21 fix races. This is either an attempt to obstruct
22 justice, count 2, or a conspiracy to attempt to obstruct
23 justice and the Government says that there are two
24 parts to that attempt to obstruct justice and the
25 conspiracy to attempt to obstruct justice.

The first part pertains to the ownership of

A241

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2 horses and the second part is the conspiracy to attempt
3 to obstruct justice in connection with the conspiracy
4 to fix races or to fix the racers themselves.

5 If you wish, I will re-read and add slightly to
6 that portion of my charge.

7 Now, with respect to the second count, attempted
8 obstruction of justice, the second count pertains to
9 the attempted obstruction of justice and the third
10 count of the conspiracy and it is the Government's
11 position there are two parts of the Government's
12 charge as to the attempt to obstruct justice and
13 conspiracy to attempt to obstruct justice and as I
14 say, they are alternative.

15 In other words, if you find that the proof with
16 respect to the ownership of the horses, the Government's
17 proof with respect to the ownership of the horses, has
18 satisfied you beyond a reasonable doubt then that is
19 sufficient to sustain both charges as far as the
20 Government is concerned.

21 Similarly, if you find the proof, as I will
22 hereinafter describe to you, as to the second part,
23 then you can act on that second part alone but bear in
24 mind that different rules apply to the different parts.

25 I will go back. There are two parts to the
Government's charge as to the attempt to obstruct

1 justice and conspiracy to attempt to obstruct justice.
2 The first, pertaining to the ownership of horses and
3 the second part pertaining to the conspiracy to fix
4 races.
5

6 With respect to the first of such parts,
7 pertaining to the ownership of the horses, the Govern-
8 ment points to the conversation between Turcotte,
9 Gerry and Kraft on August 19, 1973 and certain other
10 evidence in the case. If you find the elements of
11 one or the other or both of the charges proved beyond
12 a reasonable doubt as to such part as to a defendant
13 or both of them, then you must convict such defendant
14 or both of them, as the case may be, on the count or
15 counts -- either count 2 or count 3 or both -- so
16 proved. Otherwise, in each case, you must acquit.

17 Now, the second part, which bear in mind is
18 alternative, in the sense that the proof under either
19 part may be sufficient to sustain the charge, so to
20 so to speak -- as to the second of such parts pertain-
21 ing to the conspiracy to fix races, the Government
22 points to certain conversations between Gerry and
23 Kraft at which Turcotte was not present, including
24 part of the conversation on August 19th. You may not
25 hold any of such conversations held outside of the
presence of Turcotte against him and if you find the

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3 attempt to obstruct justice and the conspiracy to
4 obstruct justice were based solely on a conspiracy to
5 fix races as distinguished from the ownership of the
6 horses, then you must acquit the defendant Turcotte
7 and determine the second and third counts solely
8 against Gerry.

9 It's probably going to boil down to just the
10 second count against Gerry, if you bear in mind what
11 I say right now.

12 In this connection you should understand that
13 the defendant Gerry is not on trial here and neither
14 is the defendant Turcotte on trial for any crime of
15 conspiracy to fix races. The charge to this part --
16 that's the second part -- is the attempt to obstruct
17 justice, count 2, and the conspiracy to attempt to
18 obstruct justice, count 3.

19 As to this second part of the proof, if you
20 find that Gerry and Turcotte did not conspire to attempt
21 to obstruct justice as to a conspiracy to fix races --
22 as to the second part of the charge -- then you must
23 acquit them both on this count, count 3.

24 Now, as to this second paragraph in count 3 of
25 the indictment, which as I think you all know, reads
that the two defendants did willfully and knowingly
combine, conspire, confederate and agree together and

A 244

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8 2 with each other to procure Elden Turcotte to commit
3 perjury.

4 I think that is fairly obvious and you should
5 not have too much difficulty with that.

6 The perjury they conspired to commit is set
7 forth in count 1 of the indictment.

8 MR. BOBICK: Your Honor, may we have a side bar?

9 THE COURT: Yes.

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11 (Continued next page.)
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1 (Sidebar discussion.)

2 MR. BOBICK: I think if we could work it out
3 I would like you to charge this jury that it is not
4 false ownership of the horses but attempting to get
5 Kraft to lie about it and I would say the same thing --

6 THE COURT: I understand.

7 MR. DEL GROSSO: Excuse me, your Honor --

8 THE COURT: That is correct.

9 MR. DEL GROSSO: I didn't hear that. I'm sorry.

10 THE COURT: He is talking about the fact that
11 it is not the false ownership of the horses but the
12 attempt to get Kraft to lie.

13 MR. DEL GROSSO: Oh, all right.

14 MR. CASTELLANO: Near the very end you said
15 the last count has to do with the perjury, but you
16 must remind them that they must, from the initial
17 situation, first be convinced beyond a reasonable
18 doubt that it is perjury.

19 (Conclusion of sidebar discussion.)

20 THE COURT: Are you still all confused?

21 There are a couple of things I want to add
22 and then maybe I can just go one step further.

23 I said to you, as to the second paragraph in
24 Count Three, that there was a conspiracy between the
25 two defendants to procure Eldon Turcotte to commit

2 perjury and I said the details of the alleged perjury
3 were set forth in Count One and of course, you must
4 determine that the perjury -- you must determine
5 Count One before you determine that part of the
6 attempt -- you have to determine whether there was
7 an attempt to get him to commit perjury.

8 I should add though, as I think I have said to
9 you on several occasions, it is not necessary in a
10 conspiracy that the conspiracy commit an unlawful
11 act; that the conspiracy be consummated.

12 In other words, it doesn't have to be success-
13 fully consummated.

14 This charge relates solely to the question of
15 the conspiracy to attempt to obstruct justice or get
16 him to commit perjury but I think by the nature of
17 the offense you should determine Count One first.

18 Now, with respect to the first part of
19 Paragraph 1 of Count Three, counsel have asked me --
20 and I will remind you that the charge is to endeavor
21 to obstruct justice by endeavoring to influence
22 David Kraft to give false testimony -- in other
23 words, it's not a question of the false ownership of
24 the horses but it is the endeavoring to get David
25 Kraft to give false testimony with respect to the
ownership of the horses.

A 247

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2 Do you understand what I am saying? That's a
3 kind of distinction. That is the gravamen of the
4 crime here -- whether these two defendants conspired
5 to get David Kraft to give false testimony as to the
6 ownership of the horses.

6 Now, I'll go back to the parts just briefly.
7 I'm not going to go through the entire instructions
8 but I want to see that you understand.

9 This part of the charge pertains both to the
10 second count of the indictment and to the third count
11 of the indictment and as I said, there are two parts
12 to the Government's charge as to each of these counts.

13 The second count, you will remember, pertains
14 to the obstruction of justice or the attempt to
15 obstruct justice.

16 The third count pertains to the conspiracy to
17 obstruct justice.

18 The Government says, in support of those two
19 charges, that there are two parts; the first part
20 pertaining to the ownership of horses and the second
21 part pertaining to the conspiracy to fix races and,
22 again, neither of these defendants is on trial for
23 the conspiracy to fix races but the Government charges
24 that they attempted to obstruct justice in connection
25 with the ownership of horses and in connection with

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1 4 the conspiracy to fix races and they are alternatives.

2 In other words, if the charge is sustained in
3 your minds, beyond a reasonable doubt, that there was
4 an attempt to obstruct justice with respect to the
5 ownership of horses and the conspiracy to obstruct
6 justice, then you must find whichever or both of the
7 defendants have been so proved to be guilty beyond
8 a reasonable doubt, is guilty.

9 On the other hand, if you find them not guilty
10 of that charge then you must find them not guilty
11 and they say alternatively or both -- if you find them
12 both together -- but alternatively, if you don't find
13 the proof beyond a reasonable doubt as to the
14 attempt to obstruct justice in connection with the
15 ownership of horses, then you may look to find whether
16 it was an attempt to obstruct justice in connection
17 with the conspiracy to fix races and similarly, under
18 Count Three, as to whether it was a conspiracy to
19 attempt to obstruct justice in connection with the
20 conspiracy to fix races and if you find the proof
21 beyond a reasonable doubt on that, as to one or the
22 other or both defendants, you must act accordingly
23 and if you don't, then you must acquit.

24 Now, that is very simplified. That is the
25 most simple way I can put it.

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~~A US COURT OF APPEALS: SECOND CIRCUIT~~

Index No.

USA,

Appellee,

- against -

TURCOTTE, et al,

Defendants-Appellants.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF

S.S.:

I, Karen Giles,

being duly sworn,

depose and say that deponent is not a party to the action, is over 18 years of age and resides at
1013 East 180th Street, Bronx, New York

That on the **3rd** day of **January**

1975, deponent served the annexed *Appendix*

upon

David Trager

attorney(s) for

in this action, at **225 Cadman Plaza, Bklyn, New York**

the address designated by said attorney(s) for that
purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a
Post Office Official Depository under the exclusive care and custody of the United States Post Office
Department, within the State of New York.

Sworn to before me, this **3rd**
day of ~~January~~ **January**

1975.

Karen Giles

KAREN GILES